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Public Utilities FORTNIGHTLY



January 2, 1941

THE WASHINGTON OUTLOOK FOR UTILITIES—1941
By Francis X. Welch

« »

Defense Mobilization in Japan
By Louise C. Mann

« »

Why Private Utility Financing?
By Fergus J. McDiarmid 105

PUBLIC UTILITIES REPORTS, INC.
PUBLISHERS

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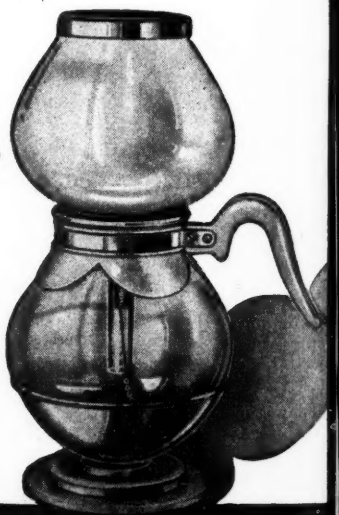


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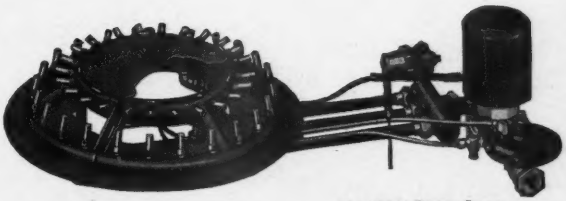
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Financial Editor—OWEN ELY

Public Utilities Fortnightly

VOLUME XXVII *January 2, 1941* NUMBER 1

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¶ *This magazine is an open forum for the free expression of opinion concerning public utility regulation and allied topics. It is supported by subscription and advertising revenue; it is not the mouthpiece of any group or faction; it is not under the editorial supervision of, nor does it bear the endorsement of, any organization or association. The editors do not assume responsibility for the opinions expressed by its contributors.*

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Pages with the Editors

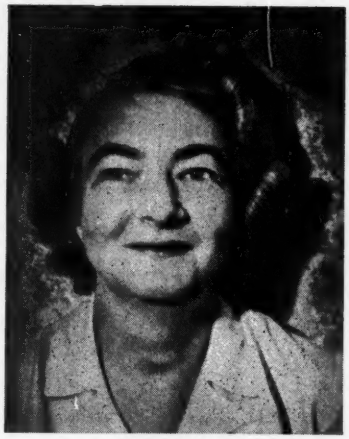
WITH the customary seasonal good will we wish everyone a Happy New Year for 1941. We wish, also, that there were a few more optimistic indications that such a wish would come true.

WISHING people a Happy New Year nowadays is necessarily a sincere but rather wistful procedure in an atmosphere of falling bombs and crumbling civilizations. Yet, if there is any mystic validity at all in the childish hope that "wishing will make it so," we may do better than expected. So we wish upon a star—the most beautiful and hopeful of all stars—and a star which signaled to the Wise Men of the East the coming of the Prince of Peace and the advent of an era of enlightenment. If it happened once before it can happen again. Anyhow, it is the best we can do for the present.

DESPITE a rather awkward *contretemps* for the American utility industries, nobody is seriously suggesting that all hope must be abandoned for those utilities entering upon this year of 1941. In fact, after reading the forecast article by FRANCIS X. WELCH of our editorial staff, the situation looks rather interesting, if not challenging. MR. WELCH has been doing this crystal-gazing act for us every year for some time now. He usually manages to come through with something fairly hopeful.

AND, as a matter of fact, if the utility industries honestly compare their position today with the gloomy forecasts that have been accumulating against them for nearly a decade, there would seem to be tangible vindication for MR. WELCH'S more optimistic slants. They are somewhat in the position of the sailor who was rescued from the sharks and boasted happily, "Guess I'm pretty lucky; they only tore my leg off."

SPEAKING of falling bombs one would ordinarily not list them under the heading of implements of historical research. Yet, that is exactly what happened the other day in London. And if our friends of the cast-iron pipe industry are as much on their toes as we think they are, they ought to get a pretty good free advertisement out of it. It seems that one of Chancellor Hitler's half-ton tokens of peace and good will dropped into the middle of ancient Guilford street, St. Pancras, London. When the débris and rubbish were combed away, in the depths of the crater there were revealed relics of the old town's first water system, laid down during the early part of the seventeenth century. This was a time when Cecil Calvert, the first Lord of Baltimore, was an active business man dickering with the crown for a grant in the New World. And another man about town, Walter Raleigh, already experienced in the New World, was languishing in the Tower of London.



LOUISE C. MANN

Nippon is definitely on short utility rations for the duration.

(SEE PAGE 11)

THE relics were two of a number of cedar trunk pipes which were laid from New river head in Clerkenwell to the houses of certain subscribers. The antiquarian of the *London Times* gives their history as follows:

"Hugh Myddelton, a goldsmith, began his work in 1609 at some springs near Ware, in Hertfordshire, and dug a watercourse to Clerkenwell, whence these wooden water mains were laid. The enterprise was a failure. The inhabitants were prejudiced against water conveyed to their houses in this fashion; and not without reason, for the mains collected and retained filth—a fact which water-carriers advertised by calling:

" 'Here is pure water from New river—none of your pipe sludge!'

"Myddelton, now ruined, appealed to the



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King for help, and James approved of a company being formed on condition that he received some shares. The company paid no dividends, however, until cast-iron was invented in 1664, when water pipes so made were laid down; then the company began to prosper. In the meantime, Myddelton, although knighted by King James, died in poverty.

"The original shares were £100 each, and by 1880 a share was valued at £90,000. The company was ultimately absorbed by the Metropolitan Water Board."

♣

WE understand that the financial community in New York city is still talking, or grumbling, about the recent thumping big offer of new securities privately placed by the American Telephone and Telegraph Company. The rising tide of private sales seems to be getting into the hair—to mix metaphors slightly—of those who earn their daily bread in the traffic of securities. Indeed, unless our failing eyes deceive us, the expressions on the faces of earnest young men who manage to keep so busy around the Securities and Exchange Commission, when the subject of private sales is discussed, are not what you would call beaming or buoyant.

IN this issue we are presenting the first of a 2-part series of articles analyzing the modern financial phenomenon of private sales. It is written by our well-known contributor, FERGUS J. MCDIARMID, utility security analyst for the Lincoln National Life Insurance Company of Ft. Wayne, Indiana. This article is more or less explanatory and nonargumentative. But in a forthcoming instalment, MR. MCDIARMID promises us grounds for plenty of argument on the controversial question of whether private utility financing is a good thing.



FERGUS J. MCDIARMID

Is private utility financing a trend or a gesture?

(SEE PAGE 20)

♣

THERE was quite a spell there when we had no word, good, bad, or indifferent, from our roving foreign correspondent, LOUISE C. MANN, veteran traveling journalist and writer on foreign business affairs. And in these troubled times no news is not necessarily good news when it comes from abroad. But MRS. MANN turned up the other day after a most productive tour of the Orient. In this issue, page 11, we present the first of several resulting articles—"Defense Mobilization in Japan."

A GOVERNMENT lawyer tells this story on himself as an aftermath of the recent Federal victory over the Appalachian Electric Power Company. He and a legal friend in private practice were walking out of the Supreme Court building after listening to Justice Reed's opinion selling the FPC *up* the river. He was so busy talking he failed to notice a caretaker washing down the white stone pavement and stepped right into the stream of his garden hose. "You'd better be careful how you squirt that thing," said the private attorney solemnly to the workman, "or the FPC will get jurisdiction over you for creating a navigable stream."

♣

AMONG the important decisions preprinted from *Public Utilities Reports* in the back of this number, may be found the following:

ONE of the effects of the present war was manifested by the Minnesota commission when it held that its investigation into the reasonableness of telephone rates should be terminated upon conditions relating to an immediate reduction, since it is apparent that operating conditions are, and for some time in the future will be, uncertain because of the repercussions of foreign wars. (See page 1.)

THE Securities and Exchange Commission discusses its power to impose conditions in its exercise of powers under the Holding Company Act, in view of an allegation of unwarranted interference with management. (See page 13.)

A TELEGRAPH company was upheld by the United States District Court in its contention that it is not only authorized but is obligated to discontinue service which contributes to and facilitates the operation of a business or enterprise in violation of law. (See page 38.)

THE next number of this magazine will be out January 16th.

The Editors

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Various regulatory rulings by courts and commissions reported in full text, pages 1–64, from 36 PUR(NS)

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Pairpoint Corporation.....New Bedford, Mass.
Charleston Navy Yard.....Charleston, S. C.
U. S. Naval Academy.....Annapolis, Md.
Metropolitan Life Insurance Co....New York City
Park Chester Housing Development
Griesdieck Western Brewery.....Belleville, Ill.
Minot Normal School.....Minot, N. D.
Southland Paper Mills.....Lufkin, Texas
Bethlehem Steel Company.....Lebanon, Penna.
Norfolk Navy Yard.....Norfolk, Va.
Fairmont City Light Co.....Fairmont, Minn.
Evenson and Levering Company....Camden, N. J.
Socony Vacuum Oil Company.....Brooklyn, N. Y.
City of Bellefontaine.....Bellefontaine, Ohio
Gallinger Hospital.....Washington, D. C.
Colorado State Agricultural College
Fort Collins, Colo.
Navajo Agency.....Ft. Defiance, Arizona
Victor Chemical Company....Mt. Pleasant, Tenn.
McChord Field, U. S. Army....Ft. Lewis, Wash.
B. F. Goodrich Company.....Clarksville, Tenn.
Canadian National Railways. Winnipeg, Man., Can.
Carnation Compny.....Sherbrooke, Quebec, Can.
Alexandria Steam Generating Co...Alexandria, Va.
South Porto Rico Sugar Company
Santa Domingo, Dom. Rep.
George Ziegler Company.....Milwaukee, Wis.
Atlas Powder Company.....Stamford, Conn.
Colorado State Capitol.....Denver, Colo.
Hercules Powder Company.....Hercules, Del.
U. S. Military Academy.....West Point, N. Y.
Container Corporation of America
Circlesville, Ohio
Commodore Perry Housing Project...Buffalo, N. Y.
DeKalb State Teachers College.....DeKalb, Ill.
United States Shoe Corp.....Norwood, Ohio
The May Company.....Cleveland, Ohio
United States Naval Hospital...San Diego, Calif.
Frankford Arsenal.....Philadelphia, Penna.
Central Park Pumping Station.....Chicago, Ill.
Virginia Public Service Co.....Hampton, Va.
Atlas Powder Company.....Atlas, Mo.
City of Fairmont.....Fairmont, Minn.
Froedtert Grain and Malting Co..Milwaukee, Wis.
Sonoco Products Company.....Garwood, N. J.
Sheridan Brewing Company....Sheridan, Wyoming
City of Fort Collins.....Fort Collins, Colo.
Ingenio Riogaila....Buenaventure, Columbia, S. A.
South Carolina Electric and Gas Co....Parr, S. C.
American Woolen Company.....Fulton, N. Y.
Keystone Public Service Company.Oil City, Penna.
Alabama Power Company.....Chickasaw, Ala.
Pennsylvania Power and Light Co.
Harrisburg, Pa.
Holyoke Gas and Electric Co.....Holyoke, Mass.
Durkee Famous Foods.....Chicago, Ill.
Blanton Company.....St. Louis, Mo.
Continental Diamond Fibre Co..Bridgeport, Penna.
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Libby, McNeill and Libby.....Chicago, Ill.
Vanadium Corporation.....Naturita, Colo.
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Editor, Electric Light and Power.

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President, First Boston Corporation.

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ALEXANDER FORWARD
Managing director, American Gas Association.

"The gas industry as a whole nearly outranks the steel industry in total investment, and has taken its place as one of the great achievements of a most remarkable generation of progress."

EDITORIAL STATEMENT
Industrial News Review.

". . . every effort should be made to have the Federal [power] plants now built coöperate with the existing private electric industry, to the end that both benefit and stay in business."

HAROLD G. MOULTON
President, Brookings Institution.

"America's answer to postwar competitive problems must be increased efficiency. Both during the war and after, unceasing attention must be given to the problem of reducing the cost of production."

JOSEPH C. O'MAHONEY
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HOMER D. ANGELL
U. S. Representative from Oregon.

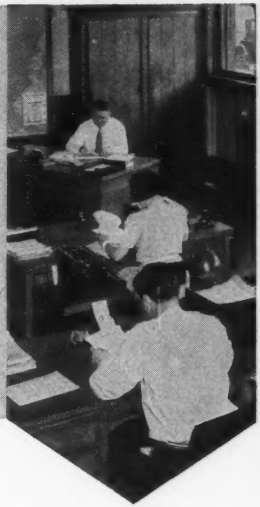
"If the incomes of all who receive $150,000 or more were divided equally among the American citizens, each would get only 15 cents, and the incomes above $5,000 if equally divided would only furnish $2.32 per capita."

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College of Law, Notre Dame University.

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WALTER C. BECKJORD
Former president, American Gas Association.

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HARVEY N. DAVIS
President, The Stevens Institute of Technology.

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SUMNER H. SLICHTER
Professor, Harvard Graduate School of Business Administration.

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SUMNER T. PIKE
Member, Securities and Exchange Commission.

"Concerns that unduly wave the flag and holler national defense too loud in seeking approval of financing plans will be given careful scrutiny by the commission. We are not going to let the public be mulcted in the name of national security."

WILLIAM GREEN
President, American Federation of Labor.

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Excerpt from report of Economic Policy Commission, American Bankers Association.

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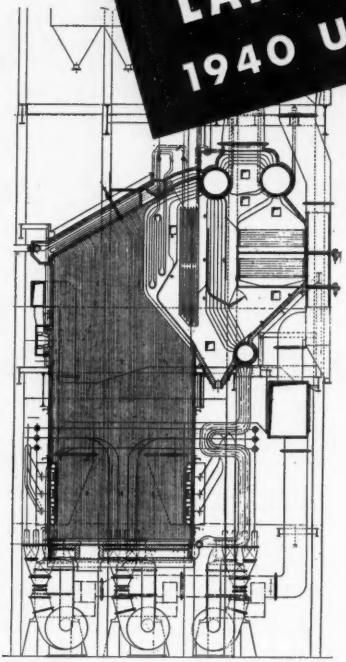
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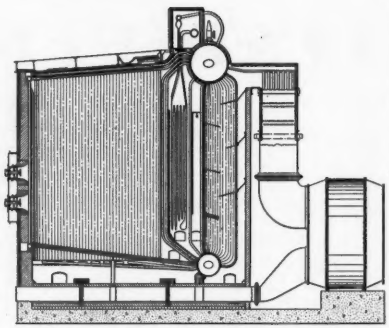
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Here's another addition to the list of outstanding 1,000,000 lb per hr units. It is the only one of this size sold during 1940. Differing from previous 1,000,000 lb units, this one is designed for the highest pressure and temperature ever used for a unit of this size. Design pressure is 1,775 lb. Total steam temperature is 955 F. The unit consists of a special 3-drum boiler with Elesco Superheater and Economizer and Ljungstrom Air Heaters. The water-cooled furnace is of the slagging bottom type. It will be fired with pulverized fuel, employ tangential burners and be equipped with C-E Raymond Bowl Mills.

LARGEST VU UNIT



Here's the "largest ever built" of the popular VU Unit which has brought the benefits of standardized design and construction to many public utility and industrial plants. This "record-breaking" job will have a maximum continuous capacity of 300,000 lb of steam per hr. It's an oil-fired unit with a design pressure of 1,000 lb and total steam temperature at the superheater outlet of 910 F. The superheater and economizer are both Elesco. The air heater is Ljungstrom. The unit is the so-called outdoor type of which several have been installed throughout the country during the past few years.

C-E PRODUCTS INCLUDE ALL TYPES OF BOILERS, FURNACES, PULVERIZED FUEL SYSTEMS AND STOKERS; ALSO SUPERHEATERS, ECONOMIZERS AND AIR HEATERS

COMBUSTION

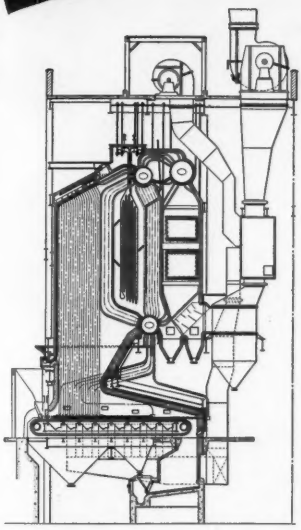
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1940 EMPHASIZE BOTH SIDES OF

C-E SERVICE

to the public utilities

LARGEST TRAVELING GRATE STOKERS



Another record is established by C-E with two units like the above which will be equipped with the largest traveling grate stokers ever built. Each of these C-E Stokers has a grate area of 586 sq ft. The units have a capacity of 185,000 lb of steam per hr each, design pressure of 1,425 lb and total steam temperature of 930 F. They are C-E 3-drum boilers equipped with Elesco Superheaters, Elesco Economizers and Ljungstrom Air Heaters. They are designed to burn a low grade fuel – No. 4 Buckwheat all through a 3/32" screen with as much as 20% through a 1/32" screen and running about 17% ash.

Following the pattern of leadership in steam generating equipment previously established by C-E, the 1940 record of service to the public utilities includes several notable achievements. Three of them, portrayed here, are remarkable for their size: First is another of the world's largest units (capacity 1,000,000 lb) of which there will now be ten in the entire world with eight built by C-E, Second is a 300,000-lb VU Unit, the largest of this type ever built. Third is a contract for two units equipped with the largest traveling-grate stokers ever built.

A fourth achievement, not illustrated, is even more unusual. It's the first high-pressure, high-temperature *forced-circulation* unit in this country, now being built for a large public utility. Capacity is 650,000 lb of steam per hr, design pressure 2000 lb, total steam temperature 960 F.

These spectacular jobs portray one important aspect of C-E's service to the public utilities, the skill and experience needed for pioneering in the field of steam generation. The other side, equally important, is portrayed by the wide range of C-E installations contracted for by utilities in 1940.

In capacity they range from the biggest 1,000,000 unit down to the smallest unit with its capacity of 30,000 lb. About half of these units are above 300,000 lb capacity; half are 300,000 lb or less. Of all these units, sixteen are designed for steam temperatures of 900 F or higher, while four others are above 800 F. Eleven of the units purchased are designed for pressures of 1000 lb or more, the highest of all being 2000 lb for the forced-circulation unit, while 1775 lb is the highest natural circulation job. Nineteen units have superheat control which in all but one case is the by-pass damper type. All units ordered, except one, have heat recovery equipment, while fifteen have both economizers and air heaters.

This combination of pioneering skill and wide experience with every size and type of job, offered by C-E, is particularly significant for any public utility which anticipates purchases of new equipment during 1941. A565-A

COMBUSTION ENGINEERING COMPANY, 200 MADISON AVENUE, NEW YORK, N. Y. • CANADA: COMBUSTION ENGINEERING CORPORATION, LTD., MONTREAL

ENGINEERING

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USE R&IE CENTRALIZED SERVICE

Use R. & I. E. centralized Service for the whole job — complete substation design and equipment. There is a big advantage in putting the entire problem under one responsibility.

In R. & I. E., the Public Utilities have found engineering ability to cope with every outdoor and indoor switching problem. Here are complete design and manufacturing facilities under one roof.

From the layout to the lines, R. & I. E. offers the benefit of twenty-five years experience.

•

RAILWAY & INDUSTRIAL ENGINEERING CO.
GREENSBURG, PA.
Sales offices in principal cities

TO BE RETIRED *with* HONORS



AFTER five years of service—but to all outward appearances in excellent condition, this rubber glove reached the end of its useful career during a standard E.T.L. 10,000-volt test.

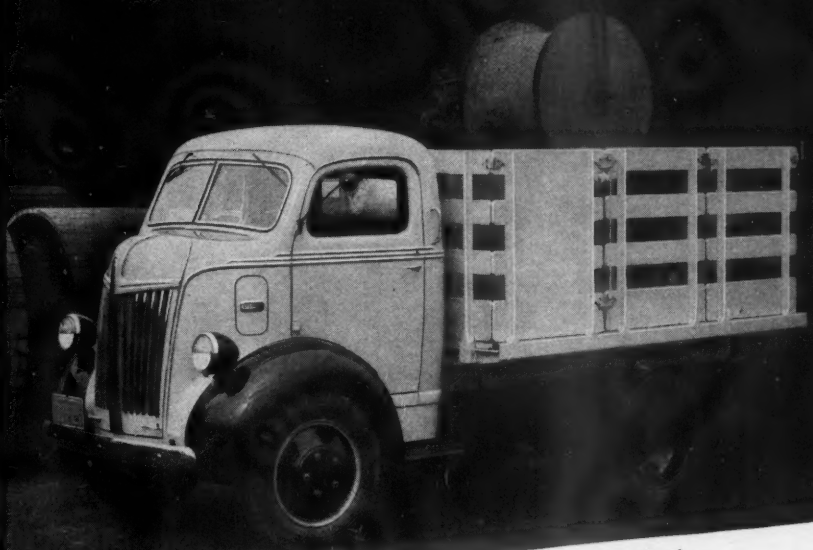
Power companies always have the problem of checking the safety of linesmen's equipment . . . and it's better to find out in the laboratory than on the "high line." Periodic checks of vital equipment at E.T.L. are inexpensive and good insurance against any future trouble.

Know by Test!

ETL
ELECTRICAL TESTING LABORATORIES
East End Avenue and 79th Street
New York, N. Y.

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The Hardest-Working Trucks in the Utilities Industry!



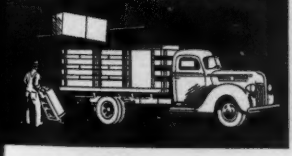
Dual wheels and heavy duty tires as shown at slight additional cost.

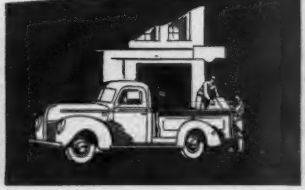
FORD TRUCKS *are on more jobs today than any other truck.* More Fords are in use by actual registration. There are Fords in nearly all of the nation's biggest fleets. What do these *facts* indicate? Just this: Large and small operators are entirely satisfied with the *high efficiency* at *low cost* of Ford hauling equipment. There's a Ford unit for practically all America's trucking jobs. There's one for yours. Without cost or obligation, call any Ford Dealer for an "On-YOUR-Job" Test.

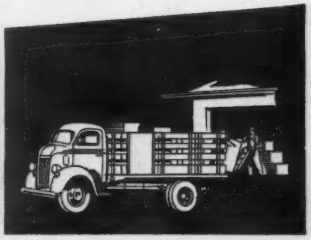
★ ★ ★

Three engines: 95 and 85 hp V-8 — new 30 hp 4-cylinder economy engine for light duty. Six wheelbases—42 body and chassis types.

FORD
TRUCKS
AND COMMERCIAL CARS

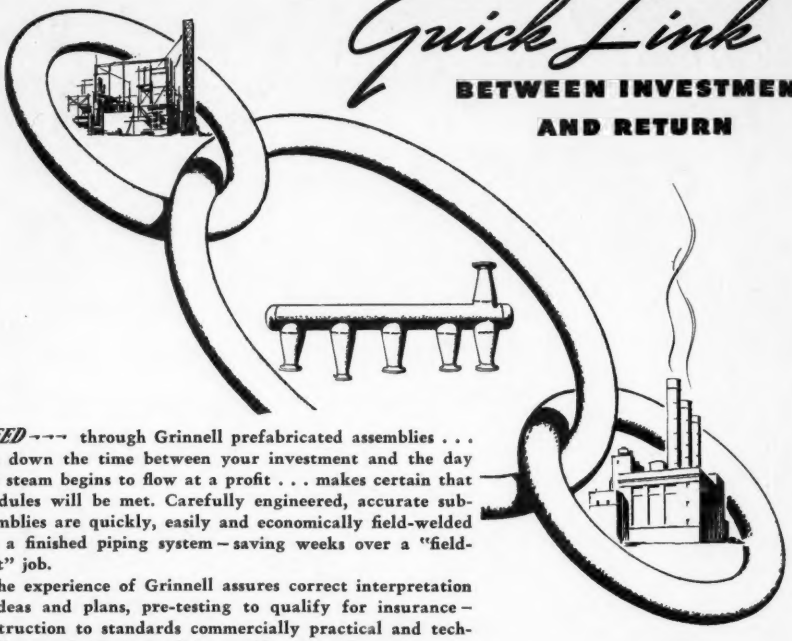






Quick Link

BETWEEN INVESTMENT AND RETURN

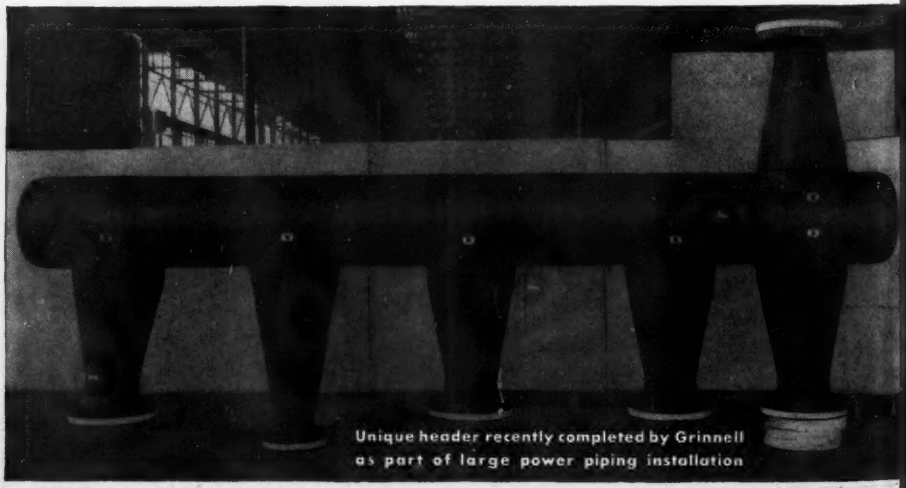


SPEED **→→→ through Grinnell prefabricated assemblies . . . cuts down the time between your investment and the day that steam begins to flow at a profit . . . makes certain that schedules will be met. Carefully engineered, accurate sub-assemblies are quickly, easily and economically field-welded into a finished piping system – saving weeks over a "field-built" job.**

The experience of Grinnell assures correct interpretation of ideas and plans, pre-testing to qualify for insurance – construction to standards commercially practical and technically sound. Plant facilities enable Grinnell to serve any part of the continent quickly. Follow the lead of hundreds of engineers and "Give the plans to Grinnell." Grinnell Company, Inc., Executive Offices, Providence, Rhode Island. Branch offices in principal cities.

PREFABRICATION BY GRINNELL

WHENEVER PIPING IS INVOLVED



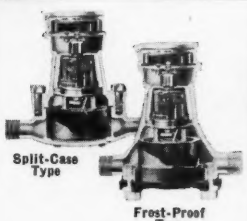
Unique header recently completed by Grinnell as part of large power piping installation

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TRIDENT

Interchangeability **MEANS**

Economy in Inventory



Split-Case Type

Frost-Proof Type

TRIDENT INTERCHANGEABILITY *means*

★ Economy in Inventory
Efficiency in Maintenance
Reliability in Performance
Assurance Against Replacements
Utmost in Revenue

Number 1 of a Series

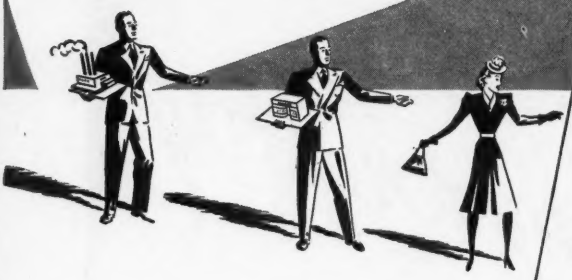
FOR ALL your Trident Meters, whether new or old, you need carry only one set of repair parts—the newest. The resultant Economy in parts inventory, in the amount of storage space required, and in the records necessary to keep track of them, is an item which no Water Department should overlook.

NEPTUNE METER COMPANY
50 West 50th Street NEW YORK CITY
Branch Offices in CHICAGO, SAN FRANCISCO, PORTLAND, ORE., DENVER, DALLAS, KANSAS CITY, LOUISVILLE, ATLANTA, BOSTON.
Neptune Meters, Ltd., 345 Sorauren Avenue, Toronto, Canada

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MANUFACTURER
RETAILER
CONSUMER

All 3 factors in distribution welcome these 3 advanced heat control features!



Robertshaw can always be depended upon to provide improvements which enable utilities and equipment dealers to *prove* to the consumer that the *best* cooking service is Robertshaw cooking service.

1. GREATER *Simplicity*

One motion turns gas on full—sets control. It saves one more operation for the user. Brings gas operating one step closer to complete automatic service.

2. GREATER *Speed*

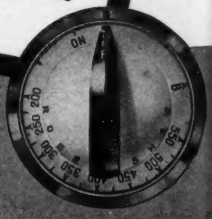
With cock and thermostat dial combined in one unit, user will turn dial fairly high when lighting the oven. The resulting full flow of gas assures quick, safe ignition.

3. GREATER *Accuracy*

Each time oven is used, thermostat must be set. Each time oven is turned off, thermostat setting is automatically cancelled. Automatic cooking with gas is made more certain and brought into wider use.

Are your salesmen armed with this efficient sales manual? It's boosting earnings for thousands of salesmen every working day. Write for a copy—free.





ROBERTSHAW
THERMOSTAT COMPANY
Youngwood, Pennsylvania

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At Royal we begin at the bottom



MAYBE IT'S BECAUSE "thoroughness" is so vital in the building of a fine typewriter. At any rate, we of Royal believe that—in the development of men or machines—the place to begin is the bottom.

We believe, further, that when a man has started at the bottom, *opportunity for advancement is the greatest single spur to efficiency and individual initiative.*

That is why, when one of our young shop employees is ready to tackle a harder job—and a better-paying one—we send him to school here in our plant. The speed with which he advances . . . the job he masters . . . is limited only by his own initative and ability.

And this policy of "growth from within" has contributed directly to the quality of the machine that bears our name.

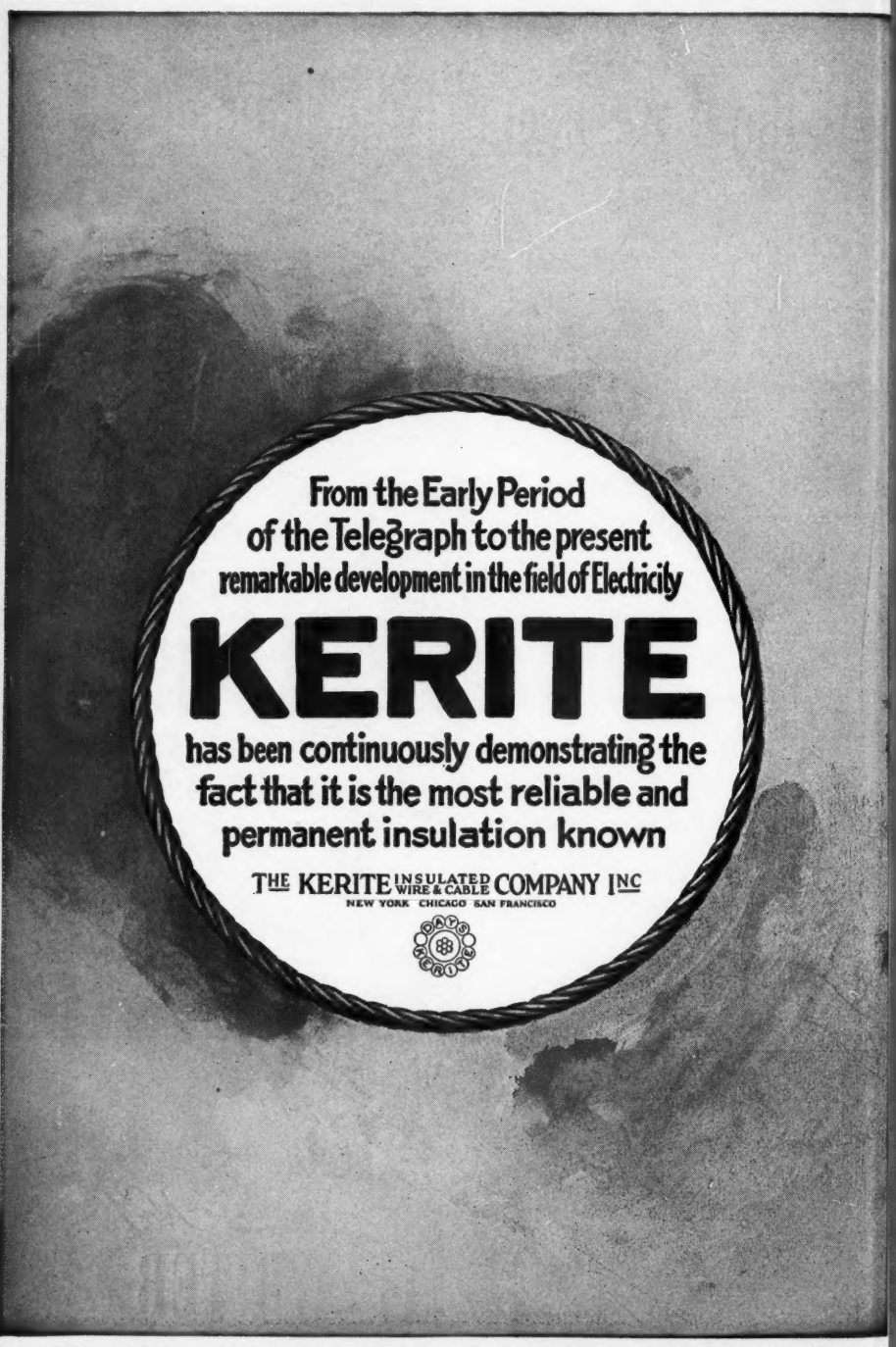
For the manufacture of a Royal typewriter requires the touch of fine craftsmanship every step of the way. 2,257 parts must be tooled to microscopic exactness and brought into perfect synchronization!

We believe that our policy of encouraging such craftsmanship—from the bottom up—is one of the most important reasons why Royal is the leading typewriter in the world today.



ROYAL *World's No. 1* TYPEWRITER

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For Emergency—Patrol
Inspection—Repairs
Standby—Watchmen

Wheat Spotlight

25,000 Candlepower
2500 Foot Beam
12 A.H.—4 Volt
Rechargeable
Non-Spillable
Weighs only 6 lbs.
Carried by hand or shoulder strap
Can be supplied with Matte Reflector for use as Floodlight

Folder and Prices sent on request.

KOEHLER MANUFACTURING CO. **Marlboro, Mass.**

***Public Utilities Fortnightly*—The one, complete information service devoted to the policies, practices and status of utilities, as affected by Government, and allied topics.**

Conducted as an open forum for the frank discussion of both sides of controversial utility questions.

Issued every other Thursday—26 times a year—Annual Subscription $15.

IT'S EASY FOR UTILITY COMPANIES TO SAVE MONEY WITH VARI-TYPER . . . .

Compose copy for your bulletins, sales manuals, booklets, catalogs, rate schedules, etc. in *your own office* on the composing Type Writer with changeable faces and spaces. Any competent typist after proper instruction can Vari-Type your work to stencil, metal plate or photo-offset master copy with *large savings* and improved appearance.

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Manufacturers of Vari-Typer
333 Sixth Avenue New York, N. Y.



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NEW 1941
CHEVROLET TRUCKS

MOST POWERFUL
TRUCK ENGINES IN THE LOW-PRICE FIELD

90-HORSEPOWER STANDARD ENGINE

174 FOOT POUNDS TORQUE

192 FOOT POUNDS TORQUE

93-HORSEPOWER HEAVY DUTY "LOAD-MASTER" ENGINE

(Optional at extra cost on Heavy Duty trucks)

CHEVROLET MOTOR DIVISION, *General Motors Sales Corporation*, DETROIT, MICHIGAN

OUT-PULL • OUT-VALUE • OUT-SELL

60 MODELS • • • ON NINE LONGER WHEELBASES • • • A COMPLETE LINE FOR ALL LINES OF BUSINESS

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2-1=0

WE sell store fronts. You sell commercial lighting. And we both try to increase our customers' business. But our fronts are most effective when they incorporate illumination . . . . and when the interior of the store and the display windows are properly lighted.

Equally so, the increased light which you sell to merchants does a much better job when that merchant installs a modern store front as well.

Obviously, then, a word from our salesmen suggesting new lighting fixtures and greater illumination insures a more effective front . . . . and a satisfied customer. And a word from your salesmen regarding modern fronts will help create better results for your products.

If we both give a gentle prod for the other's products, all profit. We'll do our share.

When you think of store fronts, think of "Pittsburgh" Pittco Store Fronts . . . . the leader in the field.

PITTCO STORE FRONTS

PITTSBURGH PLATE GLASS COMPANY

"PITTSBURGH" stands for Quality Glass and Paint

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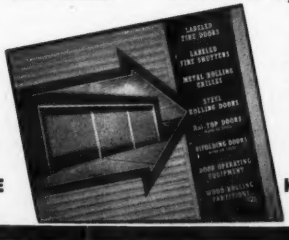
KEEP DOOR COSTS DOWN



SPEED UP DOOR SERVICE

You can do BOTH with Kinnear Steel Rolling Doors. They've proved their low-maintenance operation and lasting dependability through nearly half a century—against some of the toughest door conditions encountered anywhere! It is easy to see why! The rugged strength of Kinnear's famous interlocking-slat construction (originated by Kinnear) means extra durability — PLUS a degree of flexibility that tends to prevent damage under accidental blows or any sudden impact. And the Kinnear Rolling Door's all-steel curtain assures greater protection against fire, wind, weather, riot, theft, sabotage, etc

Still further, the vertical, coiling operation of Kinnear Rolling Doors gives you extra square yards of floor and wall space . . . keeps the doors out of the way of plant operations and out of reach of damage when open . . . prevents snow, ice or swollen ground from hampering the smooth, easy, counter-balanced operation of the doors. Take the first step toward real door economy now by sending for full details. The Kinnear Mfg. Co., 2060-80 Fields Ave., Columbus, Ohio.

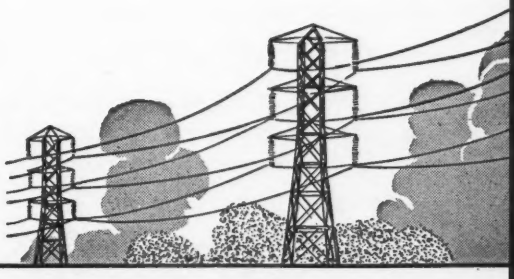


SEND FOR THIS COMPLETE KINNEAR CATALOG TODA

KINNEAR ROLLING DOORS

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Transmission line construction costs can be materially reduced and completion expedited by using Hoosier Crews



HOOSIER ENGINEERING COMPANY

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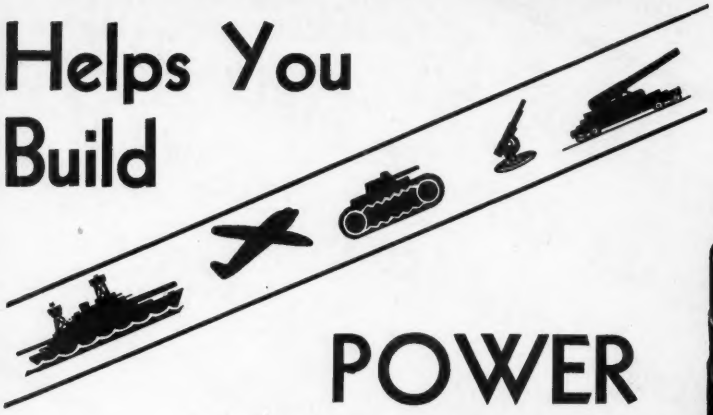
Canadian Hoosier Engineering Company, Ltd.
Montreal

ERECTORS OF TRANSMISSION LINES

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CRESCENT

Helps You Build





POWER for DEFENSE

CRESCENT'S large, complete and up-to-date facilities for the manufacture of electrical wires and cables are meeting the great demands for industrial expansion for national defense.

These facilities are backed by over 50 years' experience and skill in the manufacture of

- POWER CABLES • CONTROL CABLES
- SIGNAL CABLES • PORTABLE CABLES
- BUILDING WIRES

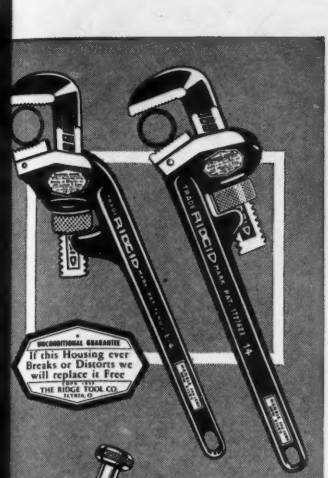
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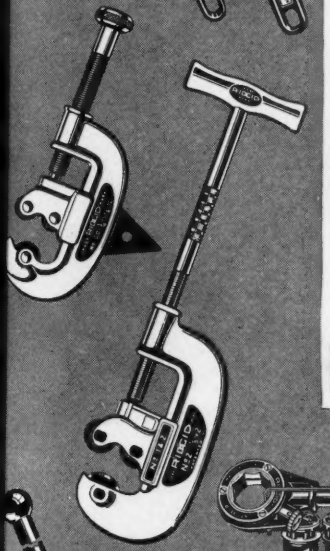
Drop Cable
Lead Covered Cable
Magnet Wire
Parkway Cable
Service Entrance Cable
Varnished Cambric Cable
Weatherproof Wire

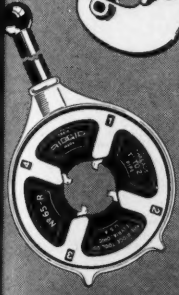
CRESCENT INSULATED WIRE & CABLE CO. INC
TRENTON, NEW JERSEY

All types of Building Wire and all kinds of Special Cables to meet A.S.T.M., A.R.A., I.P.C.E.A., N.E.M.A., and all Railroad, Government and Utility Companies' Specifications.

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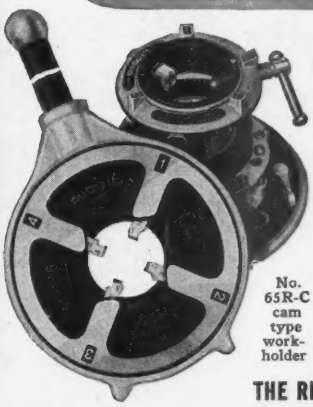








You'll like the new mistake-proof workholders on these RIDGID No. 65R Threaders



No. 65R-C cam type workholder

IT'S A TROUBLE-SAVER—all the way through. Turn the gauge ring to your pipe size, put on pipe, tighten one screw—no chance for mistakes. And it threads 1", 1¼", 1½" and 2" pipe with ONE set of chasers—no extra dies to carry around, to lose. Easily shifted from one size to another.

This new all-steel malleable-alloy threader gives you new speed, accuracy and perfect threads. Your men *enjoy* using it, do more work. Buy it at your Supply House.

THE RIDGE TOOL CO., ELYRIA, OHIO

RIDGID PIPE TOOLS

RIDGID PIPE TOOLS

In use all over the world

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Profit by the experience of professional record keepers — the men who guard the priceless public records of our cities, counties, states and the nation — preserve all your valuable and important records on Byron Weston Co. Linen Record. Available through your printer, stationer or any Weston paper distributor.

FOR PAPER BUYERS: *The latest news and information about paper, briefly digested in* Weston's Papers, *a publication for paper buyers. Get your copy regularly. Write,*

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THERE'S AN EXIDE FOR EVERY STORAGE BATTERY APPLICATION

Exide
CHLORIDE
BATTERIES

IN POWER plants all over the world, the extensive use of Exide - Chloride Batteries in stationary service indicates the high regard in which they are held by consulting and operating engineers everywhere.

Kept floating on the line and consequently well charged at all times, the Exide-Chloride affords dependable protection against interruptions in service occasioned through uncontrollable emergencies.

That explains why these batteries are used in such a wide variety of plants for the operation of circuit breakers, steam valves, boiler and fire alarms, telephones, remote control, time clocks, and for emergency lights, excitation and other services.

Write us for detailed information about this distinctive battery. Learn why its Manchester Positive and Box Negative plates retain their active material much longer than ordinary batteries and give this battery such exceptional life.

THE ELECTRIC STORAGE BATTERY COMPANY, Philadelphia
The World's Largest Manufacturers of Storage Batteries for Every Purpose
Exide Batteries of Canada, Limited, Toronto

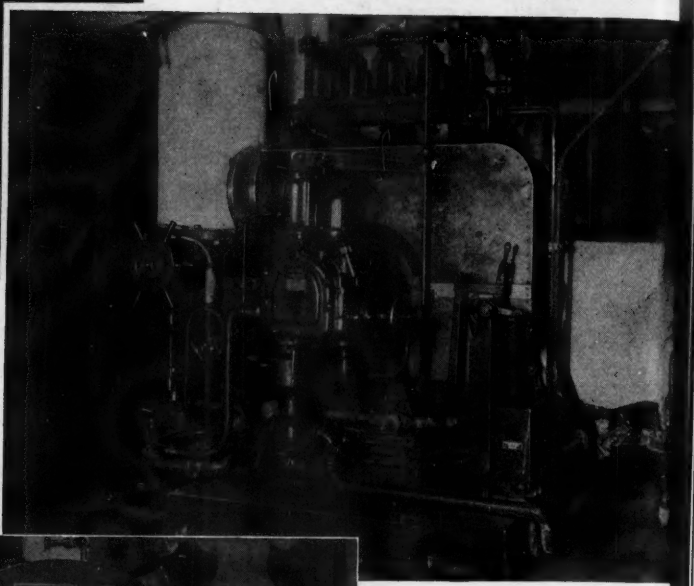
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ELLIOTT TURBINE

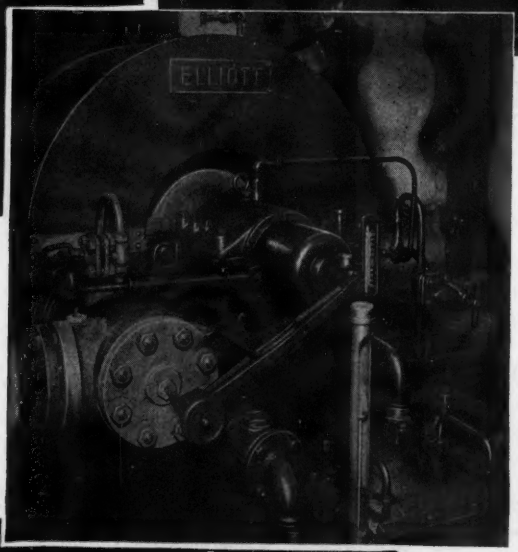
serve important auxilia drives at Schuylkill

PHILADELPHIA ELECTRIC COMPANY at its Schuylkill Station

uses three Elliott 2000-hp. turbines like this for driving boiler-feed pumps. These turbines take steam at 215 lb. gage, 517 deg. F. and exhaust to 5 lb. gage. The turbines are bled between the first and second stages to supply steam for the second heaters and the evaporators.



ALSO in this station, three Elliott 390-hp. turbines, one of which is shown in the photo, drive tank pumps. These are constant-speed turbines taking steam at 215 lb., 517 deg. F and exhausting at 5 lb. back pressure.



H-629b

When the Philadelphia El Company modernized th portant downtown Schuy Station, Elliott Turbines selected for driving boiler and tank pumps.

Elliott turbines are thu portant factors in the heat ance scheme of this sta Such vital drives justify h efficient dependable turb

When you want turbine dependability see the Elliott engineer

ELLIOTT COMPAN

Steam Turbine Dept., JEANNETTE, P

District Offices in Principal Cities

Utilities Almanack

JANUARY

2	Th	¶ *Missouri Valley Electric Association will hold power sales conference, Kansas City, Mo., Jan. 16, 17, 1941.*
3	F	¶ *National Public Housing Conference will be held, New York, N. Y., Jan. 24–26, 1941.*
4	Sa	¶ *American Society of Heating and Ventilating Engineers will convene, Kansas City, Mo., Jan. 27–29, 1941.*
5	S	¶ *American Institute of Electrical Engineers will hold session, Philadelphia, Pa., Jan. 27–31, 1941.*
6	M	¶ *Society of Automotive Engineers opens winter convention, Detroit, Mich., 1941.*
7	Tu	¶ *Edison Electric Institute Electrical Equipment Committee will hold meeting, Detroit, Mich., Feb. 10–12, 1941.*
8	W	¶ *Southern Gas Association and AGA Southern-Southwestern regional gas sales conference will hold joint meeting, Dallas, Tex., Feb. 10–12, 1941.*
9	Th	¶ *American Management Association will hold personnel conference, Chicago, Ill., Feb. 12–14, 1941.*
10	F	¶ *AGA Mid-West regional gas sales conference will be held, Chicago, Ill., Feb. 17, 18, 1941.*
11	Sa	¶ *Edison Electric Institute Transmission and Distribution Committee will hold meeting, Detroit, Mich., Feb. 17–19, 1941.*
12	S	¶ *National Manufacturers Association will hold convention, Chicago, Ill., Feb. 17–21, 1941.*
13	M	¶ *National Retail Dry Goods Association opens session, New York, N. Y., 1941.*
14	Tu	¶ *League of Wyoming Municipalities opens meeting, Cheyenne, Wyo., 1941.*
15	W	¶ *American Society of Civil Engineers convenes, Baltimore, Md., 1941.*



From an etching by Orie Van Rye

Lineman

Public Utilities

FORTNIGHTLY

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The Washington Outlook For Utilities—1941

The New Year—beset with the uncertainties of international hostilities and political administration—presents a foggy 1941 outlook for utilities from the vantage point of Washington. Yet this author manages to find considerable sunshine mixed with the rain and predicts that the utilities will experience a busy and fairly satisfactory, if not actually happy, New Year.

BY FRANCIS X. WELCH

ACCORDING to the past predictions of certain political dope writers, and on the basis of form, the reëlection of the New Deal for a third term should have meant a virtual *coup de grâce* for the private electric utility industry in the United States. Moreover, it should have spelled out a warning of increasing difficulty for other forms of public utility enterprise in the United States, such as the telephone and gas industries.

In other words, during the first term the power industry was cast in the rôle of a villain. During the second term—a whipping boy. Therefore, during the third term, it should be the *corpus delicti*. All that would remain, under this time-table, would be a few scattered remnants of private enterprise. And the triumphant public ownership advocates, after mopping these up, could organize their forces and turn their attention to telephones, natural gas pipe lines, and other socialistic objectives.

But like certain other famous time-tables, these forecasts have been run-

ning way behind schedule during the past five years. The actual outlook for 1941 is something far different. Instead of a demoralized electric power industry, showing numerous bald spots, we find at the end of two terms of the New Deal that the public ownership movement, as such, has made only modest progress. Even that amount of progress is tapering off rapidly.

WITH the exception of the Tennessee Valley Authority deal (buying out the Tennessee holdings of the Commonwealth & Southern Corporation), we find little indication that the American private power business is destined to join the passenger pigeon soon or ever. True, a number of new public power projects, especially in the Northwest and Southwest, have been authorized. Some are already completed. The rest are due to come into production during the next couple of years. But in the field of local electric power distribution, public ownership has made scarcely a dent.

Under pressure of the PWA loan-grant policy of the Second Term, a number of smaller municipalities did go into the public power business—thereby temporarily reversing a downward trend in the number of municipal plants since 1922. But the curve has again flattened out—along with the virtual suspension of the PWA type of spending.

What is the reason for this failure of public ownership, even under such favorable auspices as the New Deal, to make more important gains in the field of local distribution? The answer seems to be based entirely on the mundane matter of money. Direct public ownership takes money—a lot of it.

As long as the Federal government was willing to shovel it out to the cities and counties in loans and grants, local public ownership picked up a few customers. But now that the golden stream from Washington has been diverted into the more thirsty and necessary channels of national defense, the cities lose interest. Even the high-pressure area surrounding the Federal public projects in the Columbia river basin shows only a handful of new converts in sparsely settled public power districts.

It is significant that during the entire eight years from 1933 through 1940 *not a single city of large population*—outside of the TVA area—has come into the public ownership fold. San Francisco, after turning down proposals to put her into the electric distribution business so often that the voters have lost count, was finally blackjacked into a long lease agreement to take over the local properties of the Pacific Gas and Electric Company. This was accomplished by a combination of Secretary of Interior Ickes and a Supreme Court decision which otherwise would have cut off the city from the use of power and water supply from the Hetch Hetchy dam.

THAT just about brings us up to date on this primary question of importance to the utility industry. What does the future, or, more particularly, 1941 hold out? This writer, anticipating the continuing demand by the military and naval forces for all available Federal funds in the interest of national defense, makes these forecasts:

1. There will be no important new public power projects authorized by

Congress in 1941, with the exception of the revived St. Lawrence proposal.

2. Because of Canadian defense needs, a treaty (or alternative legislation) authorizing the construction of an international public power development along the St. Lawrence river will receive more sympathetic attention in the Senate than a similar treaty which was denied confirmation in 1934.

3. Public power projects to which the Federal government is already committed will be completed and the program of the REA, in promoting rural electrification, will not be interrupted, although its appropriations may be somewhat modified because of the more urgent national defense demands.

4. Administrative consolidation of public power projects already under way will be continued. This would mean the creation of a Columbia River Administration to coördinate the projects in the Northwest. It would also mean congressional action towards more uniformity in rates and other practices between the different public projects throughout the country.

5. For reasons already mentioned, municipal public ownership is not expected to make any headway at all in 1941, barring a few minor gains in areas under pressure from Federal public project promoters on the West coast. Because of this stalemate along the power front, no serious agitation for a spread of public ownership of utilities is to be expected in other fields of public service such as railroads, telephones, telegraph, or gas.

So far we have been dealing only with the public ownership phase and from what has been said it does not look as though it is going to loom very large in 1941. But it is a different story entirely along the regulatory front. Utilities can expect continued advances by Federal commissions in this sector. Federal bureaus will become more powerful and Federal regulation more expensive and intricate.

State commission regulation is going to be eclipsed in some small degree by this 1941 emergence of Federal regulatory activity unless all present signs are erroneous. But this does not mean that the jig is up so far as state commission regulation is concerned. There will be many more battles between Washington and the states on that score; but they won't be fought out during 1941.

By way of background, it might be well to recall that the general political reform movement, which we have come to know as the New Deal, logically divides itself into three phases. These are, roughly, coincident with the three terms of President Roosevelt and also with the three branches of the Federal government.

The first term (1933-1936) was the legislative phase. The spotlight was on Congress and most of the important work was done in Congress. During this period most of the basic New Deal laws were written into the statute books: The Social Security Act, the National Labor Relations Act, the Tennessee Valley Authority Act, and many others. The New Deal had its way without very much opposition during these years.

The second term brought up the judicial phase. It was shortly after his second inauguration in 1937 that President Roosevelt launched his controversial Supreme Court reform bill. By this

time, most of the New Deal reform laws had worked their way up to a position where they awaited final judicial approval on constitutional ground. Some had already been thrown out by the old Supreme Court.

After much opposition, it will be recalled, President Roosevelt had his way along this line too, although not exactly in the fashion in which he set out to have it. Nevertheless, sometime between 1936 and 1940 the Supreme Court, rejuvenated with New Deal appointments, managed to approve practically all of the major laws advocated by the administration.

AND now comes the Third Term and the period of administrative consolidation. The New Deal laws have been written on the books and they have been approved by the courts. Now they must stand the test of routine administration in the face of a national defense emergency which threatens to plunge us into war itself. It will not be an easy task. There will be no lack of opposition, in Congress and elsewhere, to take advantage of fumbles or blunders by administration staff workers.

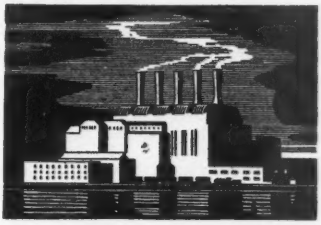
Yet the administrative boards hold the best cards. Only a couple of weeks ago the Supreme Court, in the Appalachian Case, upheld the jurisdiction of the Federal Power Commission over hydroelectric structures on non-navigable tributaries of navigable waterways. The courts generally have been flashing the lights from red to green all along the line for the Federal bureaus.

Only in Congress is there left a nucleus of independent opposition to the New Deal. But that seems to be growing. Right now congressional opposition may not seem to the administration strategists to have much more than a particularly high nuisance value. But a few more upsets like the Logan-Walter bill, which the President vetoed, may place the "loyal opposition" in a position to seize the balance of power. It may even take the initiative if its political fortunes are successful in the congressional elections of 1942.

GETTING down to brass tacks, here is what is meant by the forecast that the Federal regulatory administration is going to be more restrictive in 1941:

1. The SEC is really going to hand down some integration orders under the so-called "death sentence" during 1941. The casualties are expected to be few because most of the holding company systems followed the election returns. They have been busy trying to figure out their own salvation under § 11 of the Holding Company Act in such a way as will hurt them least. But we can expect some decisive action from the SEC in the form of making smaller ones out of big ones for at least three major holding company systems. And there will be more during 1942. The national defense situation will probably serve to temper the SEC's discretion and keep it from getting too tough. This, despite Commissioner Healy's recent statement to the effect that vigorous prosecution of the integration program is entirely consonant with national defense. However, the SEC is definitely through with further stalling around on this duty.

2. The Federal Power Commission, armed with new jurisdictional powers by the Supreme Court's decision in the Appalachian Case, is going after the



Washington—Utility Highlights during 1940

JANUARY: Canadian defense revived talk of St. Lawrence project.
FCC recommended merger of national telegraph lines.

FEBRUARY: Supreme Court declared FCC winner in jurisdictional feud with District of Columbia Court of Appeals. FCC won AT&T toll rate cut.

MARCH: SEC cited nine holding company groups to comply with the "death sentence." Subsequently, the SEC decided to take initiative in framing integration plans. Federal judge named outside trustees for Associated Gas & Electric receivership.

APRIL: Defense spending deflected congressional appropriation for new public power projects. St. Lawrence proposal cooled off.
Supreme Court decided against San Francisco in the Hetch Hetchy Case.

MAY: Congress approved Norris compromise on TVA tax payments.
Federal jury in Washington state condemnation recognized "severance damages."

JUNE: Nazi blitzkrieg success galvanized American opinion—reflected in utility industry by "fifth column" consciousness, antisabotage precaution, and stricter personnel surveillance. EEI's chief, Kellogg, named power consultant to National Defense Commission. Republicans nominated Mr. Willkie.

JULY: Democrats named President Roosevelt for a third term. Arkansas Supreme Court crossed up regulatory precedent by approving duplicate construction and rate competition between natural gas operators.

AUGUST: Despite Secretary Ickes, Senator Norris, Mayor LaGuardia, and others, the so-called "utility issue" in presidential campaign came in like a lion but went out like a lamb—the voters appearing apathetic.

SEPTEMBER: Congress passed peace-time conscription bill which included provisions for so-called "industrial draft." FCC succeeded in obtaining a special telephone fund despite earlier congressional rejection. Defense Communication Board created.

OCTOBER: Commissioner Thad Brown resigned from the FCC after Senate Republicans tried to turn his reappointment hearings into an investigation of the commission, involving radio irregularities.

NOVEMBER: Third term approved by the voters with strong GOP opposition.
Logan-Walter bill passed Congress but not the White House.
Secretary Ickes finally approved a San Francisco public power distribution lease, ending the Hetch Hetchy controversy.

DECEMBER: St. Lawrence power treaty revived for the coming congressional session. Supreme Court upheld FPC jurisdiction over hydro plants on non-navigable tributaries of all navigable streams.

licensing of hydroelectric properties in a big way. Not only utility companies but private industrial hydro properties, and even those situated along the back streams and muddy creeks, are going to get letters from the FPC asking them to come in for licensing purposes. The FPC is also going to press its attempt to establish retroactive jurisdiction over hydroelectric sites built prior to the Federal Water Power Act of 1920. The FPC will, of course, stay right on the power industry's tail with respect to keeping power reserves up to snuff for purpose of defense industry. Monthly bulletins along this line will have a cumulative effect in making the nation power reserve conscious. So the industry might be well advised to keep on the safe side of capacity rather than try to argue with the FPC on the issue of adequate reserves.

3. The FCC was given a small but separate appropriation by the last Congress to set up a special bureau for telephone regulation. This is just a start; but, once established, it will undoubtedly be expanded. The telephone industry can, therefore, look for the FCC to be more active in telephone matters during 1941. The FCC itself can expect a continuation of sniping on Capitol Hill because of radio complications. But whether Congress will actually get around to that long-threatened investigation is just about a toss-up.

4. Don't be surprised if the FCC, FPC, and possibly the SEC begin picking away at the "anti-Shreveport clauses" of the various Federal regulatory acts which are supposed to preserve the respective jurisdictions of the state commissions. Here, again, the Supreme Court decision in the Appalachian Case, although not a direct precedent, suggests a line of legal reasoning likely to encourage Federal commissions to encroach on jurisdictional boundaries of the state boards under the familiar argument about matters "affecting interstate commerce."

5. Utility rates, having struck an economic bottom, or nearly so, during the continuous regulatory and political pressure of the last eight years, are not likely to drift downward much farther. On the contrary, the problem of the utilities will be to make both ends meet at prevailing rate levels in the light of rising taxes, payrolls, and other operating expenses. And it will be exceedingly difficult, notwithstanding economic justification, for utilities to move state or Federal commissions to authorize rate increases. Hence, a period of rather lean net earnings.

6. However, the general industrial activity stimulated by the national defense program is going to make all lines of the utility business hum for at least two years—probably four. Additional gross revenue from new business and increased consumption should go a long way towards overcoming advances in operating costs.

THUS we see that the national defense program may prove a blessing in disguise for the privately owned utility industries on more than one count. Not only will it divert Federal spending from public ownership channels; but it will put so much more business on the utility books for 1941 that even the anticipated boosts in taxes, operating costs, and regulatory restrictions should not hurt too much.

Indeed, the industry will need all the revenue it can get to offset rising costs. This is obvious from the fact that the

Forecasts for 1941 in a Nutshell

PUBLIC OWNERSHIP: No new Federal projects to be authorized except the St. Lawrence. But completion and administrative consolidation of Federal projects built or under way will progress, particularly the Columbia river project. REA will go forward, although appropriations may be modified. Municipal and local public ownership will make no great gain.

REGULATION: All three Federal commissions will engage in active promotion of their respective regulatory laws—the FPC, FCC, and the SEC. This, notwithstanding the defense program. The SEC will be particularly active on holding company integrations; the FPC will "move up the river" on hydro plants, while the FCC will be stricter with the telephone companies. Congress may give the FCC and radio an overdue "going over."

NATIONAL DEFENSE: Thanks to the national defense, business activity will enable the utilities to make both ends meet, notwithstanding rising taxes and other operating costs. That's for 1941 only, the long-range outlook clouded by international complications. Labor will make substantial gains under the stimulus of the armament program. Although this may not affect the utilities directly, it may have future political reverberations.

electric industry showed a 3 per cent gain in net income in 1940 over 1939, despite an increase of about $50,000,000 in taxes. If the new taxes had not appeared, the increase in net revenue would have been about 12 per cent. However—and this is important—it has been estimated that a gain of about 6 per cent recorded for the first six months was cut down by the heavy tax accruals in the third quarter, bringing the gain for the entire year to about 3 per cent.

If this new tax trend continues—and indications are along that line—the expense curve may well overtake the rising revenue curve in 1941. So the industry will be lucky to break even—which is to say, do as well in 1941 as it did in 1939.

AND, taking a longer-range view, it must be remembered that the national defense program is an artificial stimulant. This means that the better it is over the short range, the worse the reaction is going to feel when the post-rearmament economic hangover sets in.

President Roosevelt has already announced that plans will proceed on peace-time public works proposals to take up any slack (through unemployment or business collapse) that might come with the tapering off of the defense spending stimulant. Of course, this won't happen during 1941 nor 1942. But it is something serious to think about. It means that if the national defense program should wear off too early during the third term, and if the New Deal still maintains effective political control in Congress, we can expect a revival of PWA policies and the like.

Much, too, depends on whether the United States should become involved in war, or, in the event of unexpected peace in Europe, what kind of an economic world order would then obtain. If we should become involved in war, it is quite likely that the Federal government would assume such stringent

centralized control not only over utilities but all forms of major industry as to come pretty close to a form of national socialism. This would not be socialism in the old-fashioned sense of the government buying, owning, or operating industry. It would be more in the form of the new style, totalitarian socialism, whereby the government says in effect to business, "You can keep your cows, but give us the milk."

If Great Britain should manage to wangle some sort of a face-saving peace during 1941, and assuming that we are able to keep out of the conflict ourselves, the utility industries, in common with all forms of American business, should be able to recover slowly but painfully during gradual tapering of the rearmament spending.

In the event of a British collapse, on the other hand, still assuming that America is able to remain at technical peace, most Washington experts feel that the national defense program will be pushed that much farther and will probably extend over the entire span of the third term.

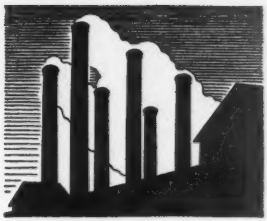
BUT national defense will not be alone in the spotlight during 1941. It will have to share attention with a strong labor movement. Indeed, some Washington experts think labor will provide even more news during 1941 than our domestic national defense activity. Probably it will be the same news, because the two subjects are bound together so closely.

It is only natural to expect that labor is going to make all the gains it can during the commercially active period of rearmament process. Labor leaders feel with some confidence that they will be able to control nearly 50 per cent of the voters by 1944, if present membership campaigns are successful.

That would seem to be almost an unbeatable political combination if it were united. But there is the rub. The CIO seems to be headed towards a third party, somewhat similar to the Labor party in England, in an effort to grasp the balance of political power. The AFL, recognizing the procedural handicaps of a third party movement, appears to be trying to grasp control of the Democratic party, but with the same end in view as the CIO. This likewise presages conflict and increasing opposition from the southern and conservative Democratic quarters.

Between this split in the labor camp —a split which shows no practical sign of healing—a conservative coalition of elements from both Republican and Democratic parties is quite likely to make progress in national affairs. Uncertainties resulting from war clouds preclude any more definite forecast.

BUT utilities do have a stake in the labor controversy — even during 1941. There is already on foot a movement to suppress or greatly modify strikes in vital defense industries, which would probably include the public utilities. It may be the elevation of Harry Millis to the chairmanship of the National Labor Relations Board will temper that tribunal's attitude sufficiently to avoid drastic legislation along this line. But if more strikes continue to embarrass American defense efforts, don't be surprised if Congress passes and the President signs legislation that would require compulsory mediation in defense industries (again including utilities) before a special defense labor board.



Defense Mobilization in Japan

Government operation of public utilities—the railway, telephone, and electric situations—5-year program of power expansion—coal and oil problems*

By LOUISE C. MANN

JAPAN was handicapped at the outbreak of the China Incident by the necessity of blazing the way in mobilization of resources for national defense. Although Germany had been experimenting with national socialism for some years, Japan was the first Power actually to engage in warfare, with the result that her lessons from Hitler were unfinished and her economic preparedness somewhat lacking.

Nippon was consequently forced to turn abruptly from the depression of the early '30s, characterized by curtailment of industry due to overproduction, to a war-time economy with its accompanying shortages of essential materials. Although many of her difficulties were caused by lack of natural resources, such as oil and iron, Japan being a "have-not" nation, other obstacles, such as the shortage of coal and electricity, could have been avoided by long-range planning at the outbreak of the Incident or, still better, a few years before.

Since the United States is laying far-reaching plans for national defense, it behooves us to examine carefully Japan's accomplishments and her mistakes, in order that we may profit from her experience. This material was collected with great difficulty, because any information pertaining to economic or financial matters in Japan is regarded as a military secret, and any person making inquiries thereon is subject to imprisonment. Fortunately much material was printed in English before the signing of the Tripartite Alliance and before the independent *Japan Advertiser* was purchased by the Gaimusho-controlled *Japan Times.*

Mobilization for national defense includes government operation of public utilities. In Japan the important railways have been efficiently operated by the state since 1907, and the telephones inefficiently ditto since 1890. (*Japan Year Book* 1940.) Electric power, on the other hand, was most successfully developed by private capital until after the outbreak of the Incident, when it broke down because of a severe drought at the moment that the

* This article is uncensored.

government took it over. The shortage of coal, which also curtailed the generation of power, was partially caused by government interference in a free economy. (*Advertiser Annual Review* 1939-40.)

In 1938 the state railways had a mileage of 17,934 kilometers, and the local railways 6,944. The net profit of the state railways in 1938 was Y 166,149,000, or 6.19 per cent to capital. By 1939 profits had increased to 6.7 per cent, as against 5.46 per cent in 1936, the pre-Incident year.

THE Japanese railways are characterized by a surplus of passenger cars and revenue over freight, because the people love to travel for pleasure, while most freight goes by water. One handicap is the large number of locomotives per car due to the mountainous country, and another defect is the narrow gauge. The result of these factors on the war economy is that the shortage of freight cars has partially caused the shortage of coal, while the mountainous country makes necessary the use of large amounts of power, either coal or electricity, since many of the lines are electrified. More fuel is therefore necessary per freight car than in the United States, while the narrow gauge reduces the amount of freight carried per car.

On the other hand, the state railways have maintained their outstanding punctuality in spite of the war difficulties, and there has been no disorganization such as occurred in the United States under McAdoo.

The Department of Communications operates the post, the telegraph, and the telephone. Since the post and the telegraph conform to Western standards, it is difficult to understand why the telephone development has been so backward. The *Japan Year Book* 1940 lays the blame to state management which prevented expansion by insisting on too much red tape.

At present the shortage of telephones is so acute that a new installation can be acquired only by purchase on the black market at a price of Y 2,300 (about $500) and the danger of imprisonment. When an individual is so influential and wealthy as to obtain a telephone installation for home use, the news appears in the society columns of the daily papers.

The cause of this difficulty goes back to the inauguration of the telephone service. In 1893 the telephone brokers bought up all the telephone numbers, reselling them to the public for whatever the traffic would bear. Telephone rights were quoted in the financial columns of the papers (like AT&T rights when a stock dividend was issued).

WHEN the situation became worse owing to the war, and the price of telephones rose to Y 1,000, the government interfered by establishing a maximum price of from Y 300 to 400. Since the brokers refused to sell at these low prices, no telephones were forthcoming, especially after many people were jailed for violating the price regulations.

The government has a few numbers which it sells to the Army and munitions manufacturers, and occasionally to the public by drawing lots. These telephones cannot be resold, but if the recipient of a new right already owns a telephone, the old one may be sold at an enormous profit. Furthermore, telephone rights can be held indefinitely,

because there is no physical property to depreciate or to be covered by insurance.

It is alleged that AT&T offered to alleviate the situation and supply all the telephones necessary to meet the demand, but that the Japanese government turned down this opportunity in order to prevent profits and management from going to foreign capital. In the meantime the Department of Communications is planning to install party lines with ten people on one line, and to limit the number of calls.

With the exception of the long-distance telephone service, which is handled by AT&T, all the international communications are controlled at the Japanese end by the Ministry of Communications and the International Telecommunications Company, a semi-official agency. It is alleged that all long-distance calls made by foreigners are transcribed by a force of about 200 Nisei girls, who listen to the conversations and make phonograph records of them.

THE situation in the electric power industry in Japan is equally interesting although not so fantastic. Although the electric industry started in 1887 with thermal production by the Tokyo Electric Light Company, after the turn of the century hydroelectric development began on such a scale that today Japan is one of the most highly electrified countries in the world. Her total production of electricity in 1937, the last year for which figures are published, was 26,714,000,000 kilowatt hours, being surpassed only by the United States, Germany, Russia, and the United Kingdom in the order named.

In 1933, 91 per cent of Japanese homes and offices were lighted by electricity and 90 per cent of the manufacturing and mining industries operated by electric power. In 1936 there were 12,176,098 customers, using 3.6 lamps per household, or 63.2 lamps per 100 persons. A country so completely electrified becomes dependent upon power, and feels all the more the adverse effects of a breakdown in the electric system.

Of the 1937 total, 21,779,000,000 kilowatt hours was hydroelectric, against only 4,935,000,000 thermal. The country is fairly well suited to hydroelectric development because of the mountainous terrain and plentiful rainfall. The potential water power is estimated to be 10,800,000 kilos or 14,400,000 horsepower, of which approximately 50 per cent is being used at present. One great drawback exists, however. Seventy per cent of the rainfall occurs during the summer, while the winter dry season corresponds with the heaviest demand. For this reason

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stand-by steam plants are a necessity, and there has been a steady growth of thermal power in recent years.

Production of electricity, therefore, is partially dependent upon production of coal, since it is necessary for Japan to import 90 per cent of her oil from without the yen bloc, and several million tons of coal are being diverted into production of synthetic petroleum. Consequently, when an unusually severe drought struck the country at the same time that the supply of coal began to dwindle, the situation became extremely serious.

THERE were several causes for this situation: (1) During the depression, both the coal and the electric industries were suffering from overproduction, so that the possibility of a shortage had not been considered. (2) The low-price policy of the government to prevent inflation discouraged the production of coal and other fuels such as charcoal, because the rise in production costs eliminated profits. (3) The shortage of materials and labor curtailed not only the mining of coal but the construction of new waterworks which might have alleviated the effects of the drought.

The amount of coal mined has actually increased, but not nearly in proportion to the demand, while at the same time the quality suddenly began to deteriorate. It is thought that reckless mining during the plentiful years exhausted the best veins. The use of inferior coal resulted in a drop of 30 per cent in the steam generation capacity of the electric industry.

In 1937, 45,258,000 metric tons of coal were mined and 3,400,000 were the net imports from what is now the yen bloc. Consumption for that year was 44,605,000 metric tons. Since that date, the last for which complete figures were issued, Manchoukuo has begun to consume most of her own coal. Unsettled transportation and labor conditions curtailed supplies from North China until this year, when Japan is obtaining more coal than ever before from that region, according to the *Peking Chronicle*.

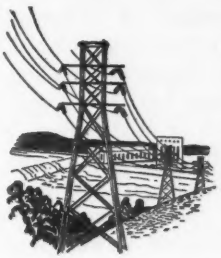
At the outbreak of the Incident many coal miners were called to the colors, and many more attracted by the higher wages in the munitions industry. The *Advertiser* says, "At first the government failed to realize the importance of the coal-mining industry in relation to the war-time situation and favored the munitions industry." It was not until June, 1939, that the Welfare Ministry issued instructions that coal mining be granted the same favors as munitions. Labor was so scarce that between 2,000 and 3,000 women had to be employed in the mines, and eventually 20,000 laborers were imported from Korea.

IN 1938 the government reduced the price of coal by Y 1.10 per ton, while the cost of production subsequently increased by 26 per cent, thus eliminating profits of the coal mines. Production was further hampered by shortages of materials, such as safety lamps, iron and steel, carbide for illumination, rubber soles for miners' shoes, and nails for wooden shacks. The government finally decided to circumvent the price issue by granting a subsidy of Y 80,600,000 to the coal industry.

In 1939 deliveries of coal to steam stations generating electricity dropped

Electricity in Japan

"In 1933, 91 per cent of Japanese homes and offices were lighted by electricity and 90 per cent of the manufacturing and mining industries operated by electric power. In 1936, these were 12,176,098 customers, using 3.6 lamps per household, or 63.2 lamps per 100 persons. A country so completely electrified becomes dependent upon power, and feels all the more the adverse effects of a breakdown in the electric system."



about 75 per cent at the same time that the worst drought in 150 years hit the country. In some hydroelectric plants the motors had to stand completely idle for days, while water had to be transported by trucks for use in steam boilers. (*Advertiser Annual Review.*)

The war and the administration cannot be blamed for the drought, except as the construction of reservoirs had fallen behind owing to lack of materials. In fact, Japan has the best water system in Asia, being the only Oriental country where it is not necessary to boil the drinking water.

From the beginning, however, the Fates were against the success of the nationalization of the electric industry in Japan. The drought began in April, 1939, and it was on the first of that month that the Japan Electric Power Generation & Transmission Company assumed control of the important generating and transmission facilities in the country. Opponents of nationalization gloated over the fulfilment of their dire predictions.

Having reached this dramatic climax, let us turn back and trace the story of nationalization of power from the beginning. For several years, nationalization had been discussed, following the world trend toward government ownership or control of the electric industry. Private capital consequently became discouraged, and there was no further expansion pending the outcome of the negotiations to formulate the nationalization program. Since consumption was still stable in 1935, the sudden increase in demand had not been foreseen. Furthermore, doubts had been expressed as to the efficiency of government-managed companies.

The first nationalization bill which was drafted called for complete control of the generation and transmission facilities of all the private companies, which would have reduced them to the status of mere holding companies, according to the *Japan Times* 1938 Symposium. The Diet considered this plan to be too drastic, however, and it was temporarily shelved.

After the outbreak of the China Incident the emergency was such that the first Koneye government revived the idea, and on March 26, 1938, the 73rd Imperial Diet approved the necessary legislation for the partial nationalization of electric power.

The first law creates the machinery for the Electric Power Control, comprising the Japan Electric Power Generation & Transmission Company and the supervisory Electricity Bureau to decide on new expansion. This bureau has the control over rates, with the avowed purpose of supplying adequate power at lower cost, neither of which ends has yet been accomplished.

The second law defines the Japan Electric Power Generation & Transmission Company more explicitly. All of the transmission systems and all of the new generating plants were to be taken over, leaving some of the existing water-power facilities in the hands of the private companies. The contributing companies were paid in shares of the new company on the basis of half the total construction cost and profit value. The construction cost is defined as actual cost less depreciation, and the profit value computed on the basis of the average profit rate for the past ten years. The government guarantees that the new shares shall receive a minimum dividend of 4 per cent for ten years.

The third law disposes of the debentures by stating that the facilities of the existing private companies on the security of which bonds were issued shall remain unaffected, even after they have been taken over by the new company. To protect the bondholders' interests, the new company shall guarantee both the principal and interest, in case obligations are not met by companies involved.

INVESTORS were not too happy to have their mortgage security transferred from actual plant to the guaranty of the Japanese government, although the latter might be safer in the event of an air attack. (The main electric systems in Japan are all interconnected so that, in case of bombing, current can still be supplied.) Government credit in Japan depends upon such factors as gold reserves, currency inflation, foreign trade, and the fortunes of war.

Until recently foreign investors were further protected by the inspection of the books of the electric companies by auditors employed by the foreign banks who originally floated these bonds. In April, 1940, however, these books were closed to foreigners, as part of the military secrets law.

The fourth law strengthens the government control over the retail distribution of electricity, and supervises disposal of profits, writing off of assets, and extension of services of private electric companies. In Japan under the National Mobilization Law the government has assumed control over the new construction of all plants because of the shortage of iron and steel. (Since the recent United States embargo on scrap iron, it is estimated that there are stocks on hand for almost a year, but that the much publicized low-grade iron ore in Manchoukuo will fail to meet the requirements expected of it by wishful thinking.) This same National Mobilization Law also limits dividends to 8 per cent, but none of the electric companies and only one gas company is affected.

Later in 1939 the new Generation & Transmission Company was authorized to take over all water-power plants generating more than 5,000 kilowatts, steam-power plants generating more than 10,000 kilowatts, and transmission equipment transmitting more than 100,000 volts.

THE *Advertiser Annual Review* says:

> The company was actually brought into being through the absorption of 33 existing power concerns hitherto operated for private profit. The valuation of their plants was determined and announced by the government as Y 653,100,000, or 1.5 per cent (Y 9,800,000) above their book value. With this investment in mind, the authorized capital of the new company was fixed at Y 739,315,300 with an additional Y 100,000,000 to be paid in cash. Debentures and other outstanding liabilities amounted to Y 292,000,000, which brought the total capitalization to Y 956,000,000, rendering the new concern easily the largest in Japan proper.

The *Japan Year Book* adds:

> Simultaneously with the company's organization, the Great Consolidated Electric Power Company was dissolved and its U. S. dollar obligations, amounting to approximately $10,000,000, were transferred to the new concern under an arrangement by which the Japanese government guarantees repayment of the principal and interest. Bonded debts of the Tokyo Electric Light Company, the Toho Electric Power Company, the Nippon Electric Power Company, and the Ujigawa Electric Company have not been transferred to the new company, but they too are guaranteed by the Imperial government.

It was estimated that the company should be able to distribute dividends amounting to 6 per cent for the first year, gradually rising to 7 per cent in the next few years. When the first stockholders' meeting was held in December, 1939, however, after the disastrous drought, it was announced that the dividend would be only 4 per cent, and that the government guaranty was the only reason for that payment. The company has incurred a net loss, which is now increasing due to the high price of coal. One of the emergency steps taken was to import coal from India and Canada at Y 64 per ton, against the official domestic price of Y 25. In order to compensate the company for the rising price of coal, a subsidy was demanded of the Finance Ministry of Y 13,000,000, which, incidentally, is the amount paid out in the 4 per cent dividend.

IN spite of these many difficulties and drawbacks, plans are now being formulated for the completion of power nationalization by government control of the distribution systems. According to the *Japan Times*, the problem is complicated by the fact that many distribution companies are owned by the electric railways, and that some of the big chemical industries and other works are controlled by the power companies. The problem is whether to place everything under the control of the generation and transmission company, or whether to divide the country into blocs with a separate corporation in each region.

Also under discussion is a new 5-year program by the Cabinet Planning Board to expand power production between 1941 and 1945, but the details are as yet very nebulous. The expansion will particularly affect 12 types of

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munitions industries, including airplanes, oil, steel, automobiles, and machinery.

As long as generation of electricity could not be immediately increased in 1939, however, efforts were made to reduce the consumption. At first this economy was expected to be voluntarily carried out by consumers; but coöperation by the public was lacking, as it has been lacking in many measures of economic control in Japan. Large factories were especially notable for not restricting their use of power; particularly hard hit was the chemical industry, which needs an unbroken supply of electric energy of normal frequency. Several of the chemical and all of the electrochemical industries, which had been originally built to use excess power during the rainy season at an infinitesimal rate, were depressed when there was no longer any supply of surplus power.

FINALLY, in 1940 the Power Supply Adjustment Law was applied, resulting in the prohibition of the use of electricity for neon signs, electric decorations and signs, flood lights, garden lights, multivalve street lights, bath heaters, garden pumps, elevators of less than 10 meters in height (except for hospital and freight uses), and newly installed electric heaters, cookers, and refrigerators, according to the Mitsubishi Economic Research Bureau.

Since the use of other fuels which could be substituted for electricity, such as gas, coal, charcoal, and oil, has been equally restricted, it looks like a long cold winter for the Japanese. The *Advertiser* facetiously suggests that the good old New England practice of "bundling" should be revived.

After maximum prices were set for charcoal the supply of charcoal at the official price began to dwindle rapidly, with the result that that fuel is now being rationed at one-third of the amount normally in use. Furthermore, the government has on hand supplies for only one month at the rate of one bale per family, with future stocks not being delivered as rapidly as necessary.

The coal shortage has resulted in a drastic rationing of illuminating gas for the winter, the reduction averaging about 15 per cent of the amount consumed in the last six months, even though no gas was used during the summer. Restaurants are cut from 25 per cent to 40 per cent for cooking, but government buildings only 10 per cent.

As I was sitting shoeless on the floor of a well-to-do Japanese home I complained of feeling chilly. The host apologetically explained that the authorities had only two days before sealed the plug for the gas stove attachment, and has also removed one of the three gas burners in the kitchen. Japanese homes have no central heating, and oil furnaces are, of course, unknown.

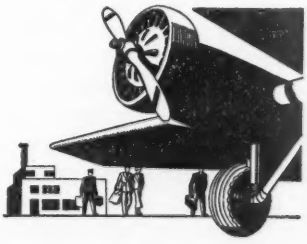
FOREIGNERS are given plentiful supplies of coal, and manufacturers claim that they have ample stocks as far as quantity is concerned. However, when I was visiting a silk filature I noticed that the piles of coal in the back yard resembled the kind of slate which is used for fire-proof roofing; I wondered how it would burn. Meanwhile, owing to the winter water shortage and use of this inferior coal by power plants, the electric clocks in Tokyo and Osaka are slowing down, claims the Nichi Nichi.

While there may be large stocks of oil and gasoline in Japan, they are stored for military use, while the public is limited to the use of 7 gallons of gas per month and even tourists spending foreign exchange are unable to hire cars to drive into the country. Many cars and busses were converted into charcoal burners, before the shortage developed in that fuel, but their use now is also restricted.

In spite of these discomforts and hardships, the Japanese people show no signs of weakening. They still have enough to eat, because, although their rice is mixed with wheat, fish are plentiful. The Tripartite Alliance is not popular, but cannot be criticized because it is an Imperial Rescript. The people are not pleased to have their government under German influence, and many of them prefer American ideas.

Although the Nipponese are passive and patient, the idea that they can be easily regimented is a mistaken one. The economic controls have not worked well due to lack of coöperation; almost 100,000 persons have become involved with the police in the last two years for violating the official price, rationing, or import permit measures. The new ban on luxuries will cause not only more dissatisfaction, but many bankruptcies. On the other hand, the aggressive radical element, who might have started a revolution, is in the Army, which is already in power.

The Japanese nation, therefore, shows no evidence of crumbling from within, as there is also no sign of defeat from without. The totalitarian New Structure of Premier Koneye plans to consolidate the power of Japan for a supreme effort toward final victory, and, war-weary as they are, the people of Nippon will fight on to the end with spirit unbroken.



Mounting Air Transport

FIGURES presented at the annual meeting of the Air Transport Association of America show an accelerating use of the air in the United States. The yardstick of revenue passenger miles flown by the domestic airlines shows that while there was a gain of only 5 per cent in 1937 as compared with 1936, the gain in the succeeding year was 17 per cent, in 1939 42 per cent, and for the first eight months of this year 62 per cent as compared with the like period last year. Gains in cargo carrying are now of the order of 25 per cent a year and are expected to show still further expansion. With a load factor of something more than 60 per cent, aircraft on some domestic lines are now being used on an average of ten hours a day. More aircraft for civil use obviously are badly needed.



Why Private Utility Financing?

Recent large-scale financial operations by such important utility systems as the American Telephone and Telegraph Company have taken the form of private placement of sales of new securities to large institutional investors instead of the open market. What is behind this private utility financing, and to what extent is it likely to be practiced?

By FERGUS J. McDIARMID

THERE is no phase of recent public utility financial operations which has aroused quite so much deep-seated interest as the direct sale of entire bond issues to a small group of large financial institutions. Especially poignant have been the feelings on the subject of the investment banking fraternity, whom the practice threatens to reduce to a diet of bread and cheese.

Watching from the sidelines, so far in uneasy silence, are the smaller and some of the medium-sized life insurance companies and banks of the country, who are being deprived of the opportunity to invest in an increasingly wide range of the better utility securities. There is definite evidence that the Securities and Exchange Commission has been taking a lively if somewhat secretive interest in the matter. And there have been expressions from government officials of a highly critical nature. On the other side of the fence a large life insurance company, a leader in this private financing, has taken the trouble to publish and circulate a lengthy brochure in defense of the practice, written by a member of its legal staff.

In this article the subject of private financing has been treated as objectively as possible, no sinners being brought to task and no halos awarded. Two main phases of the matter have been covered. First the widespread and growing extent of the practice has been set forth. Also, an attempt has been made to reveal the underlying forces and conditions which have brought it into being and pushed it along. Controversial phases of private or direct financing will be dealt with in a subsequent article.

IN the first ten months of the year 1940, $1,668,000,000 of corporate bonds were issued or had their issuance arranged for in the United States. Of these some $499,000,000 or 30 per cent

of the total have been or will be handled privately. Of these bonds sold directly to institutions $203,000,000, or 41 per cent of the total thus handled, are utility securities.

The direct sale of whole issues of utility bonds to financial institutions, chiefly life insurance companies, is a phenomenon almost entirely of the last five or six years. It came into being with the wave of refundings which has been created by the present period of low interest rates. As a characteristic of our financial system it seems to be of increasing importance. In 1939 out of a total of $872,830,000 of bonds of electric utilities sold, $252,625,000 or 29 per cent of the total went directly to financial institutions. Swelling this total was a $114,500,000 issue of Commonwealth Edison, the largest private sale of electric bonds to date, the direct sale of which caused much gnashing of teeth in La Salle street. Also in 1939 was the $66,582,000 bond issue of New York Power & Light which also went *en masse* to life insurance companies.

BOND ISSUES OF ELECTRIC UTILITIES
(Millions $'s)

	By Public Sale	*By Private Sale*	*Private Sale of Total*
1935	957	111	10%
1936	1,123	157	12
1937	523	38	7
1938	751	193	20
1939	620	253	29

Almost as this article is being written the telephone industry is making the largest private bond sale to date in the form of a $140,000,000 issue of American Telephone and Telegraph sold to 14 life insurance companies. The largest single allotment was $50,000,000 of bonds to one insurance company, which may also be a record. In 1939 a $75,000,000 bond issue of New York Telephone was sold to a group of insurance companies.

There have been quite a number of smaller telephone issues going the private way. Also several natural gas pipeline issues and a wide scattering of water bond issues, both medium and small in size, have been handled in recent years without benefit of underwriter. The latter lend themselves particularly well to this type of financing in that they are for the most part small, compact situations where the cost of a public flotation would be excessive in proportion to the amount of bonds to be sold.

So much for the essential facts surrounding this growing tendency for public utilities to sell their security issues directly to financial institutions. Now let us take a look behind the scenes. What set of long-term forces and trends is behind this evolution in American finance? Are these forces and trends likely to continue to operate?

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The writer has read a number of discussions of this matter. Several have been by investment bankers who are no doubt activated by the very understandable and not unworthy desire to continue to eat at regular intervals. It is only natural, therefore, that their point of view may not be entirely objective, may fail to include the whole sweep of the horizon. For the emergence of this type of finance has been brought about by a number of influences, some of them quite fundamental, which by and large have been pulling in the same direction.

In the arrangement of private financing the life insurance companies have played the dominant rôle, with the banks and other financial institutions taking a relatively minor part. Were it not for the vast accumulation of life company funds this type of financing would probably never have been possible. For this reason some study of the nature and extent of life insurance accumulations and the investment problem which they create seems to be an absolutely essential part of any intelligent analysis of this subject—in fact it is a rather large part of the total story.

Popular saving accomplished through the accumulation of life insurance reserves is in one respect like hardly any other type of saving. If one makes a deposit in a savings bank, this represents a single transaction without any necessary follow-up. However, when one purchases a life insurance policy and pays the first premium this ordinarily represents only the first of a long series of similar payments which must be made in order to achieve the purpose embodied in the first payment. Life insurance, therefore, has about it an element of forced saving voluntarily begun.

THIS element of forced saving embodied in the accumulation of necessary reserves has made life insurance the most important single means of saving for the masses of the American people. This statement is not carelessly or loosely made. At the present time the accumulated liabilities of American life insurance companies to their policyholders exceed by a small margin all savings and time deposits of both savings and commercial banks combined.

The most spectacular feature of these life insurance savings, as represented by the securities, mortgages, and cash of the companies, has been their rapid rate of growth in recent years. Since the year 1911 the assets of American life insurance companies have increased five times as fast as the national population and over twice as fast as the total bank deposits of the country.

At the end of 1929, just after the bubble had burst, these life insurance funds amounted to $14,221,000,000. Ten years later, after a decade not noted for its expansion in other fields, these funds stood at $24,898,000,000, indicating a rate of growth averaging considerably in excess of $1,000,000,000 a year, or an increase of 75 per cent for the decade. Quite lately this rate of increase in life company funds has if anything been accelerated. In the single year 1939 they grew by fully one and two-thirds billions of dollars.

Strangely enough this great increase in assets took place in a decade during which life insurance in force grew by only 10 per cent. The great piling up of assets was due primarily to the ac-

cumulation of reserves on policies already in force. Secondarily, it was due to a great amount of frightened money seeking a haven in annuities and other investment types of insurance life contracts. Since these forces still remain active, a further rapid increase in life insurance funds seeking investment seems inevitable. In fact the writer would be willing to predict that even if the amount of life insurance in force in the United States does not increase another dollar, a most unlikely circumstance by the way, life company assets would increase during the next decade by an amount well in excess of the entire present bonded debt of the electric utility industry.

HAVING thus briefly called attention to the huge supply of life insurance funds seeking investment, now let us consider the demand for these funds. As a matter of fact the field in which they may be stored is quite constricted. In New York state, where companies doing most of the life insurance business in the country are domiciled, the law does not permit any such company to invest in common stocks.

As a practical matter few life companies would care to invest more than a small proportion of their funds in any kind of stocks. This is because they must carry stocks at their market value. They cannot afford to own assets which are subject to wide variation in carrying value to balance against liabilities which are rigidly defined by law. Life insurance companies are also largely forbidden by law to go out into the market and buy real estate, or to invest their funds through the direct ownership of commercial and industrial enterprises.

All of this leaves to the life insurance companies little choice but to invest their funds in evidences of debt, in the debt of railroads, public utilities and industries, of governments both local and national, and in real estate mortgages. Up to at least the year 1930 they were able to invest their funds quite comfortably, very largely in this country's long-term private debt.

However, in recent years there has been a distinct change for the worse. For the last ten years, during which the volume of life insurance funds increased 75 per cent, the total private long-term debt of the country in which these funds were largely stored was cut by about 17 per cent, from $89,000,000,000 to $73,000,000,000. This

¶ *"ALMOST by a process of elimination, or so it seems, the life insurance companies have turned increasingly to the only investment field in sight which offered a livable yield along with apparent safety of principal. I refer, of course, to the bonds of the better utilities. In the 10-year period leading up to the end of 1939 the utility bond holdings of the 49 largest United States life insurance companies increased from $1,360,000,000 to $3,533,000,000, a gain of 160 per cent. At the present time total utility bond holdings of all life insurance companies in America are probably slightly over $4,000,000,000."*

decrease took place through the repayment of loans and the unpleasant process of depression bankruptcies and foreclosures. Consider, too, that of the present long-term debt, a considerable part is now considered unsafe for the investment of trust funds. This is notably true of a large portion of railroad debt, formerly a favorite haven for life insurance funds. At the present time a conservative investor is able to point to only four or five really strong rail credits in the country.

Of course life insurance funds have spilled over heavily into municipal and government bonds, in which fields they have had to compete with wealthy individuals who are willing to buy bonds on a very low tax-free yield basis. Also in the purchase of government bonds they have been in competition with the commercial banks who are under no such pressure for yield as are the life companies with their high actuarial interest assumptions.

Almost by a process of elimination, or so it seems, the life insurance companies have turned increasingly to the only investment field in sight which offered a livable yield along with apparent safety of principal. I refer, of course, to the bonds of the better utilities. In the 10-year period leading up to the end of 1939 the utility bond holdings of the 49 largest United States life insurance companies increased from $1,360,000,000 to $3,533,000,000, a gain of 160 per cent. At the present time total utility bond holdings of all life insurance companies in America are probably slightly over $4,000,000,000.

This great increase in life company holdings of utility bonds was accomplished during a period in which the total of these bonds outstanding increased very little. According to figures published by the National Industrial Conference Board, this total grew from $12,425,000,000 of bonds at the end of 1929 to $12,875,000,000 at the end of 1938. In other words, life insurance companies gained bonds at the expense of other investors, including private individuals. The private sale of utility securities to life companies has proved a convenient device through which to accomplish this transfer in the ownership of utility debt.

In this review of the factual economic background of private or direct financing of public utility bond issues there is one additional circumstance which has not yet been touched upon. This has to do with the huge concentration of life insurance funds in a relatively small number of giant institutions. At the end of 1939 there were in the United States 306 legal reserve life insurance companies with invested assets of roughly $25,000,000,000. Of these companies six had invested assets of over one billion dollars each, totaling about $15,000,000,000 for the six, or about 60 per cent of the invested funds of all the companies. Next in line came five other companies with funds ranging from $500,000,000 to $1,000,000,000 each, and then 16 companies with assets of from $100,000,000 to $500,000,000.

Altogether then there are in this country 27 life insurance companies which own investments and cash in excess of $100,000,000 each, and these 27 institutions own 89 per cent of all life insurance assets. The investment problem of the giant companies is, of



The Insurance Company As the King-pin of Private Financing

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course, terrific. Counting the reinvestment of loans repaid, it is calculated that even a medium-sized company with assets of $150,000,000 must find safe storage for about $400,000 a week to prevent its cash from piling up. This is a serious problem but it can still be handled without taking extraordinary measures. However, consider the case of the largest company with over $4,500,000,000 of funds. It has been estimated that this company must invest or reinvest something like $2,000,000 each day.

It would under present conditions be extremely difficult to solve the investment problem of an institution of this size through the usual investment channels, buying up 20 bonds here, 10 there, and 3 somewhere else. More heroic measures are necessary and of these it is quite capable. We have seen that it can bite off $50,000,000 of bonds at a time. Such a purchase would represent only about one per cent of its assets so that any rules it may have for the diversification of its investment risks are not thus violated. Fifty million of bonds by the way represents a relatively large utility issue.

It is not surprising, therefore, that the largest insurance companies have led the field in this private financing, particularly the so-called "big five" of New York and Newark. Partly, no doubt, owing to the pressure of competition from the largest companies, some of the life insurance companies next in line in size have followed suit. In certain deals individual participations have gone as low as $100,000. Then there have been a large number of small bond issues,

ranging from $50,000 upward which have been absorbed by a single life insurance company of medium size. These have been mostly on small water and telephone utilities with an occasional small electric company thrown in.

Thus we see that on the part of the purchasers, at least, the advent of these private utility loans is not an isolated event. Rather it represents the culmination of a long-term set of forces which have by no means yet spent themselves. Likewise on the side of the utilities there must be a set of circumstances which makes this method of financing desirable on occasion. Investment bankers have been prone to give credit, or rather the lack of it, to the Securities Act of 1933, pointing out that before the passage of this act the practice of direct financing was extremely rare. In particular they point to the 20-day period during which new flotations had to stay in registration before being issued, claiming that this has been a serious hurdle in the shell-shocked bond market of recent years.

And they seem able to build up rather a good case for such a claim. Back in 1935, according to the *Commercial and Financial Chronicle,* $335,000,000 of bonds, including utility and other issues, or 16 per cent of all new flotations, went the private route. In 1936 this percentage dropped to 7 per cent, but in 1937 it rose to 17 per cent when $285,000,000 of bonds were sold privately. Then came 1938, the year of Munich, when the last twenty days of September seemed like an age. In 1938, $802,000,000 or 39 per cent of all bond issues were direct sales. In 1939 after recurrent shocks, all of which were registered on the bond market, the present war began; and in that year 43 per cent of all bond issues, or a total of $818,000,000 of bonds went the private way.

TAKE the case of leading individual issues. The large Commonwealth Edison issue which went privately was sold under the overhanging clouds which preceded the outbreak of war. Likewise the New York Telephone issue was sold in September, 1939, at a time when underwriters felt they could only guarantee a price for the last three days of the 20-day registration period. The outbreak of war, too, probably forced the private refunding of the New York Power & Light bonds after a different plan of issuance had been formulated. Detroit Edison, which had previously floated several issues publicly, sold an issue privately about that treacherous time.

Now that the 20-day waiting period has been amended, what further incentives remain for the private issuance of bonds? It is worth noting that the $140,000,000 American Telephone and Telegraph issue had the excuse of neither a jittery bond market nor the 20-day waiting period for going the private way. Of course, the expense attendant on registration with the SEC remains; also, the distaste which some managements may have to subjecting themselves to SEC investigation, rules, and regulations.

The cost of issuance is, of course, relatively of most importance in the case of small bond issues. An SEC report gives the costs of issuing publicly a large number of relatively small bond issues in the years 1935 to 1938. For issues of less than $1,000,000 the flotation cost was 7.0 per cent of gross

proceeds, and for issues between one and five million the cost was 4.5 per cent. On the other hand, a large life insurance company claims to have negotiated a large group of loans of less than $500,000 at an average cost of about 3 per cent. Certainly in the case of small issues running less than $1,000,000, the cost item seems to be a logical argument in favor of private handling.

Do large institutional buyers of bonds offer incentives to private financing in the form of lower interest rates to borrowers or less stringent indenture provisions than would be the case in a public issue? I think not. Insurance and other institutional investors are very sophisticated and well-informed buyers. They are keenly aware of the market interest rate for a given security and will probably insist on the borrower paying it. Any saving in underwriting and other fees is likely to accrue to the buyer.

For example, the recent American Telephone and Telegraph issue was sold privately on a 2.86 per cent basis, while the open market bond issues of the same company sold publicly between a 2.6 per cent and 2.7 per cent basis and might have sold to yield even less were they not selling above their call prices. Also having had painful experience with improperly set up rail bonds, institutional buyers are likely to be much more insistent on sinking-fund and other protective provisions than is the average investment banker. After all, they buy the securities to keep.

Just how far is this practice of private financing likely to be carried? Will it go on until most of the high- and medium-grade utility bonds in the country are in the portfolios of a relatively small number of financial institutions? In spite of Shakespeare's warning that "security is mortal's chiefest enemy," the American public continues to have a great desire for that type of security which experience has shown to lie in life insurance. There can be no reasonable doubt that insurance funds requiring investment will continue to accrue at a great rate for many years into the future.

There are other factors to consider. This business of private financing has been one phase of the process of refunding utility bonds on a lower-interest basis. How long will this latter process continue? There still remain outstanding a considerable volume of

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utility bonds bearing predepression coupon rates which could certainly be refunded at a large interest saving. The bonds of Alabama Power and Georgia Power are good examples. Such issues are possible candidates for private financing.

Then there are bonds which were put out as refunding general market issues in the earlier part of the present low-interest period which the further lowering of interest rates has made it possible to advantageously refund again. Will some of such issues be refunded the private way? The fact that a large part of the existing issues are already held by life insurance companies would seem to make it very easy to do so.

THERE has recently arisen, however, one huge overhanging factor which any such probe into the future must take into account. It has to do with the necessities of rearmament and possibly later of war finance. It raises the question as to how long life insurance companies and other savings institutions will be able to direct their funds at will into increasing quantities of utility bonds. There is a possibility, tending to ripen into a probability, that the government may have to take control of such new investment funds in order to bolster its own finances. That day will be hastened if the United States government feels compelled after a few months to finance the bulk of Britain's munitions purchases here in order that their flow may continue. Looking around for a parallel to confirm or deny such speculations, we may note that since the present war began new security issues in Britain other than those of the national government have been negligible. It appears to be an indisputable fact that in a modern war economy into which we seem to be drifting, the current national savings immediately become subject to the closest government control.

Does this mean that under such conditions the utilities might experience difficulty in financing necessary plant expansion? Not at all. As the mainspring of industry, including armament industry, this could never be allowed to happen. The utilities will get their financing for such requirements from the insurance companies and banks, from the general public, or maybe from the United States Treasury. However, the spectacle of the existing debt of the utilities, as distinguished from their newly created debt, continuing to flow into the portfolios of large financial institutions through the medium of private financing, may well be brought to an end.

How to Hush Lawyers

(Literal Excerpt from a Middle Western Newspaper)

"When the attorneys for both the city and the utility company continued to express their dissatisfaction with the ruling, Commissioner ——— merely smiled and told them they could file a beef."

What's the matter, commissioner, too much chewing the rag for you?



Wire and Wireless Communication

THE jurisdiction of the National Labor Relations Board over industrial disputes of local telephone companies was upheld by the United States Circuit Court of Appeals for the eighth circuit in a decision handed down November 27th. The case involved an order of the NLRB directing the Central Missouri Telephone Company to cease and desist from interfering with organization activities among its employees by the International Brotherhood of Electrical Workers (AFL).

The Central Missouri Telephone Company owns and operates a number of local exchanges in the state of Missouri. Twenty-four of the company's exchanges are located in one area of the state, while 3 other exchanges are located in a section about 500 miles distant from the general area served by the 24. None of the company's lines, however, extend beyond the state of Missouri.

In other words, the company's own physical operations are confined to the state, although it effects transmission of interstate or long-distance telephone messages to and from points served by it through connecting lines to those of interstate telephone companies.

Circuit Judge Thomas upheld the jurisdiction of the Federal board after the telephone company had elected to rely solely on the grounds that it was engaged in intrastate commerce and, therefore, beyond the control of the NLRB. Although evidence indicated that the number of interstate messages handled by the company amounted to only 7.6 per cent of total messages completed, and revenue from such interstate traffic amounted to only 13.2 per cent of total revenue, the court held that the local company nevertheless was an instrument of interstate commerce to the extent that it used its lines to effect transmission of interstate communications. The fact that only a small part of its activities were connected with interstate commerce was held not to be material.

THE company contended that the board had failed to establish proof that the company's facilities were used by business concerns, but the court held that the definition of "commerce" as used in the National Labor Relations Act is broad enough to include all communications of whatever nature transmitted by a public utility for hire.

It is to be noted that the court thus upheld the NLRB's jurisdiction on the basis of interstate business actually conducted by the telephone company, although it constituted but a minor part of its total activity. This distinguishes the case from the somewhat analogous situation in the NLRB Case against Consolidated Edison Company of New York. In that case the defendant was a power and light company whose operations were not only physically confined to the state of New York, but did not connect across state lines for the purpose of rendering even a small fraction of interstate business. In the Consolidated Edison Case, therefore, it was necessary for the Supreme Court of the United States

to base its affirmation of the NLRB's jurisdiction on the somewhat indirect status of the company's business "affecting interstate commerce."

In other words, although Consolidated Edison did no interstate business itself, a number of its important customers did, including the railroads, ports, telephone and telegraph offices, and other vital agencies of interstate commerce using power for their operations in New York city. A cessation of electric service, the highest court pointed out, as a result of an industrial dispute, would interrupt and seriously damage such interstate commerce.

Apparently, the Central Missouri Telephone Company had relied on the negative implications of the Consolidated Edison Case to sustain its opposition to NLRB jurisdiction. The company pointed out that the NLRB had made no finding or showing that a strike among its plant employees (the organization of whom created the dispute) would have any immediate effect upon the company's communications facilities. Indeed, the company claimed that it might be months before interstate communication would be in any manner affected by a strike in its plant department.

THE court held, however, that the telephone company was not entitled to complain of any lack of finding by the NLRB in this respect because it had waived its right to findings of fact by the board through consenting that the board issue its order based upon the entire record.

However, the court opinion by Judge Thomas continued:

> Further, it was not necessary that the evidence disclose that a strike induced by unfair labor practices of respondent would have an instantaneous effect on interstate commerce. The record does disclose that nearly one-half of respondent's plant department employees are engaged in routine repair work on respondent's lines and other facilities of communication. The rest are engaged in rebuilding outworn lines and in new construction work. Any break in respondent's lines, whether due to storm or other causes, requires immediate attention if the communication facilities of respondent are not to be long disrupted. The relation of the respondent's plant department employees to its interstate communication activities is therefore an intimate rather than a remote one. In this situation the board was not required to speculate on whether a strike among these employees would or would not instantly affect respondent's facilities for interstate communication. Necessarily this result would depend on the time of the strike and the length of its continuance. It is enough, therefore, that a showing is made that respondent's unfair labor practices may lead to strikes which threaten to obstruct commerce.

* * * *

THE Rochester Telephone Corporation was suddenly called upon to play a dramatic rôle in the recent health crisis in that city caused by the discovery that the principal source of municipal water supply was contaminated. The contamination resulted from the negligent pumping of millions of tons of untreated water from the Genesee river into the city's Hemlock water reservoir.

The news burst upon the city on December 12th like a tornado sweeping the whole populace within an hour. City Safety Commissioner Woods ordered immediate publication of safety warnings. The result was that the switchboards of the Rochester Telephone Corporation were so loaded that it was necessary to double its force at virtually an instant's notice. City sound trucks were dispatched through neighborhoods where phones were few, warning the populace to boil all water before drinking. Similar placards with a similar message were plastered throughout the city. Upwards of 500 telephone company operators, including 220 who were pressed into service when they showed up on a day off for pay checks, plugged furiously, ringing subscribers to deliver the warning. At the same time, operators had to handle the flood of calls from one household to another as all the populace joined in the game of spreading the vital information.

All lines were thrown into service. Operators went through lists of thousands of subscribers, calling numbers, giving this bulletin:

> A city water main has broken. Boil all water until further notice.

When party-line numbers were called, operators rang all parties at once, gave the bulletin to all who answered simultaneously.

President John P. Boylan said that on only two other occasions within his memory had the phone company's facilities reached such a peak load. The first was on September 11, 1931, date of the Eastman Kodak explosion. The second was on November 11th of the same year when the airship *Akron* passed over Rochester and business men downtown jammed their home phone lines to tell their families to watch for the dirigible.

The police department's safety sound truck, the commerce department's sound truck were sent out. These were sent throughout the northeast section of the city, their loudspeakers blaring Commissioner Woods' order. Radio stations broadcast the bulletin at regular intervals.

* * * *

THE states of Connecticut and Rhode Island, about half of Massachusetts, a section of southeastern New York state, part of Tennessee, and the Pittsburgh, Chicago, and New York metropolitan districts are scheduled to receive regular FM (frequency modulation) broadcast programs from 7 additional stations authorized by the Federal Communications Commission. The prospective service areas of these new stations aggregate nearly 50,000 square miles embracing more than 20,500,000 potential listeners.

The slice of New England referred to, plus southeastern New York including nearly all of Long Island, constitutes the 6,100 miles of territory with 1,118,000 population to be served by WDBC, Inc., of Hartford, Connecticut, through the medium of a transmitter located on the west peak of Meriden mountain, near Meriden, that state. It will operate on 46,500 kilocycles.

Twelve million people are in the 8,500 square miles of the potential metropolitan service area of Metropolitan Television, Inc., and Bamberger Broadcasting Service, Inc., both of which received grants to broadcast from New York, the former on 47,500 kilocycles and Bamberger on 47,100 kilocycles. Metropolitan's transmitter will be atop the Hotel Pierre. Bamberger will have its station at 444 Madison avenue.

Four and one-half million persons are in the 10,800 square miles of the Chicago area scheduled for service under grants to the National Broadcasting Company and WGN, Inc. National Broadcasting Company, operating from the Civic Opera House, will use 46,300 kilocycles (or another adequate frequency). WGN will have a transmitter on a 485-foot downtown office building, using 45,900 kilocycles (or another adequate frequency).

About 2,100,000 persons will be in the 8,400-square-mile service radius of the Walker-Downing Radio Corp., which will operate from 341 Rising Main street, Pittsburgh. This applicant will specify a frequency adequate for such coverage. An area of 16,000 square miles, with 819,000 population, is to be served by the National Life & Accident Insurance Company of Nashville, from a transmitter near Franklin, Tennessee. This applicant will use 44,700 kilocycles.

These grants are in addition to those announced last month as assuring regular FM programs for Detroit, Los Angeles, Schenectady, Evansville (Ind.), Binghamton (N. Y.), Mt. Washington (N. H.), Baton Rouge, Columbus (Ohio), Salt Lake City, Milwaukee, Chicago, and New York.

* * * *

INVESTIGATION of the value of the properties of the Chesapeake & Potomac Telephone Company has been ordered by the District of Columbia Public Utilities Commission, indicating that a public hearing on the company's rate base was to be expected later, which may lead to consideration of changes in telephone charges to the company's subscribers.

The latest valuation of the telephone company dates back to December 31, 1931, when an order of the commission, as modified by a decision of the District

court, placed the rate base or value for rate-making purposes as of that date at $26,098,303. The value of additions and betterments made to the company's plant since that date, using principles established by the 1931 court decision, raises the total to $40,218,902, as of last June 30th, according to figures in the hands of the staff of the commission.

Under the 1931 court decision, which ended a hard-fought contest between the company and the commission's staff and the people's counsel before the commission, the company was permitted a return on the finally determined valuation of roughly 6 per cent.

In several adjustments of sections of the telephone rate schedule since that date, it was said, the commission has taken notice of the 6 per cent return basis which grew out of the 1931 court case.

* * * *

RADIO is contributing materially to success of the United States defense program by keeping the public informed on the state of the nation, James L. Fly, chairman of the Federal Communications Commission, declared in a press interview in Miami, Florida, on December 9th, while attending the annual convention of the NARUC. The broadcasting companies are doing their part so well that Fly does not think the government would take over radio in the event of war.

He cited the belief that even if the United States becomes involved in war, resulting conditions will not be anything like those in Europe, where the military is in full control of radio broadcasting. He said:

> There might be specific instances in which the government would exercise more control, but I don't think that the government would be inclined to take sweeping control in case of war. Radio would carry on in private hands and probably do a more effective job than the government.

Fly also commended broadcasting companies for the accurate and reserved manner in which they are bringing news of the war into the homes. Fly explained:

> Radio was ahead of the public demand in moderating the dramatizing of war news. At the outset there was a tendency towards flash news interruptions of programs. But now broadcasters have settled down to a thorough, yet interesting, coverage of the war.

The FCC chairman revealed that an early decision may be expected in the monopoly investigation of broadcasting companies, undertaken by his body. Oral arguments were heard earlier in the month. He refused any comment on the grounds that the case is now before his body. Fly waxed optimistic over radio's future, declaring that the field for expansion is wide open. He explained that "broadcasters are constantly experimenting. Television will be very general in the next few years. It is stabilized now, but there is still room for improvement before television is launched commercially. Then, too, facsimile broadcasting is being perfected."

* * * *

A STEADY rise in telephone traffic, together with a marked increase in the company's construction, expansion, and improvement activities have resulted from the national defense program, Randolph Eide, president of Ohio Bell Telephone Company, told company officials at Akron recently.

Citing new factories for defense production, stepping up of production in existing industrial establishments, and rising employment, Mr. Eide said, "all of this is having a direct and marked effect on the telephone business."

* * * *

THE U. S. Supreme Court early in December refused to review a Minnesota court decision upholding a 12½ per cent rate cut compromise between the Minnesota commission and the Tri-State Telephone Company. The city of St. Paul and several subscribers had appealed on the theory that a state commission may not lawfully compromise a rate cut order (originally 25 per cent) which had already been affirmed in the state courts.

Financial News and Comment



By OWEN ELY

War Effects on Our Economic Life

THE chart on the next page, from *The New York Times,* pictures the economic effects of the first World War. Since the present war started in September, 1939, we now occupy about the same relative position calendar-wise as in December, 1915. The following is a comparison of the trend in the other war period with the present one:

	Approximate Percentage Increase	
	1914–15	*1939–40*
Stock prices	56%	Decr. 2%
Business activity	27	26
Commodity prices	14	6
Exports	127	37

The only one of the above items which has closely paralleled the trend in the earlier World War is business activity. Commodity prices have lagged somewhat, owing probably to government pressure against raw material increases. Exports made a less favorable showing percentage-wise (although in dollars the amount is almost exactly the same) owing to the almost complete cutting off of demand from continental Europe. Stock prices have lagged, not because of disappointing earnings but presumably owing to heavier taxation, political conditions, etc.

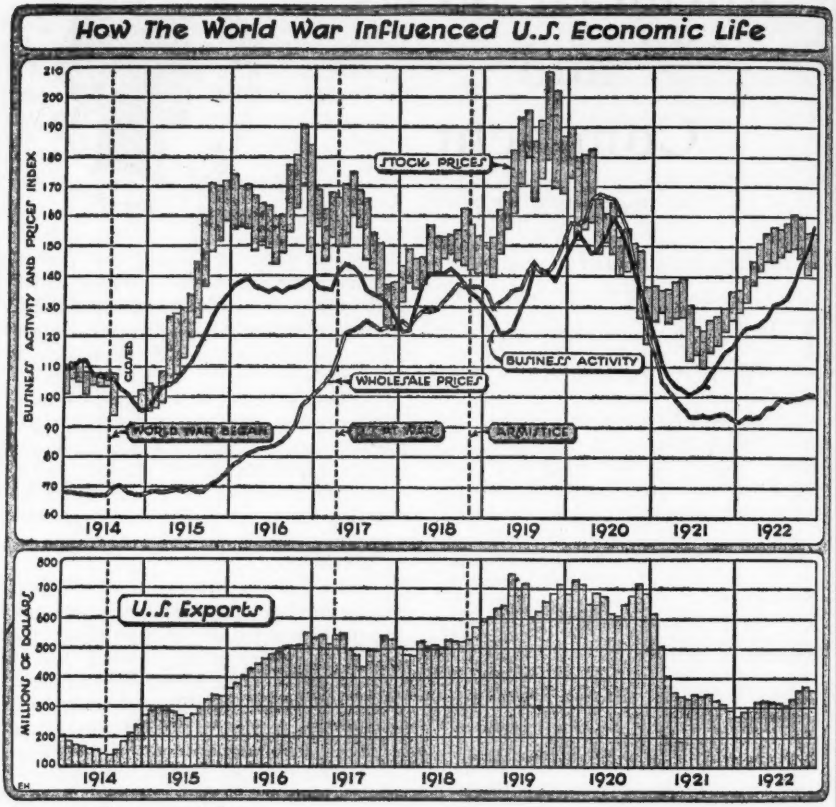
It will be interesting to discover whether the trend in 1941 will parallel that of 1916. It seems unlikely that exports will show the substantial gain which occurred in 1916, although increasing British shipments may permit some further increase. A slight drop in business activity seems likely in early 1941, due to a possible setback for the durable goods industries, based partly on seasonal adjustment factors and partly on decreased forward buying by private business; but a renewed advance in the Federal Reserve Index to around the 140 level appears likely by late spring, as production of nondurable goods begins to catch up with that of durable goods.

Wholesale prices seem likely to show further gains, but the government has much greater powers to hold back the rise than it had in 1916—though, on the other hand, the monetary foundation for inflation contains more dynamite, and wage advances are not usually opposed by Washington.

Somewhat the same considerations govern stock prices; the administration is not profit-minded or stock-minded, and tax increases are coming earlier than in the previous war. Nevertheless, many stocks appear to be selling about as reasonably in relation to earnings as they did in the spring of 1916, and sometime during 1941—possibly early in the year if the war news continues favorable—a fairly good advance would seem in prospect. The new tax bill will probably not be passed for several months at least, and its potential effects on earnings have probably already been largely digested market-wise, except for readjustments between individual groups and issues corresponding to changes in the method of computing the most advantageous tax "ceiling" for earnings.

Commonwealth & Southern

IT is reported that the SEC is preparing a new series of orders calling on additional holding company systems, including Commonwealth & Southern, to simplify their corporate structure. These



Courtesy of The New York Times

orders are said to mark the beginning of increased activity on the part of the SEC to enforce both objectives of § 11 of the Utility Act—corporate simplification and geographic integration. "Show cause" orders regarding geographic integration were served on nine large holding companies, including Commonwealth, last spring.

The requirements of "simplification" would logically seem to be (1) elimination of unnecessary system holding companies, (2) clarification of corporate relationships by elimination of minority holdings, loans by subsidiaries to parent company, etc., (3) fair and equitable disposition of voting rights among security holders, and (4) elimination of dividend arrears on preferred stocks.

Commonwealth has no subholding companies, and the common stocks of all operating subsidiaries are wholly owned by the parent company, which also owns varying amounts of the bonds and/or preferred stocks of certain subsidiaries. There are no system preferred dividend arrears, except for $17.25 a share on the parent company's own preferred stock; and that stock has always paid at least half its regular dividend rate. As regards distribution of voting power, this is a somewhat academic question on which the SEC has not thus far set up any clear-cut standards. It will be recalled

that in the case of the Consumers Power financing plans, which the SEC rejected earlier this year, it was held that this subsidiary of Commonwealth had too small a proportion of its capital in common stock. But whether this necessarily implies that (in the opinion of the SEC) voting power should be given to some of the senior securities, is open to question.

Commonwealth, as indicated by the map on next page, has two important groups of properties—a well-integrated southern group and a northern group which (with the exception of the Michigan property) is not closely interconnected, but might still form a single "system" under liberal interpretation of § 11. Based on the estimated liquidating value

Table I

PRINCIPAL COMMONWEALTH & SOUTHERN INVESTMENTS AND THEIR ESTIMATED LIQUIDATING VALUE

		Approx. 1939 Income Rec'd by C&S (Millions)	*1939 Equity for C&S Stock (Millions)*	*Basis of Valuation Multiplier for Earnings*	*Basis of Valuation Approx. Market Equity Value*	*Approx. Estimated Value (Millions)*
Northern Properties						
1,811,716 shs.	Consumers Pr. com.	$4.0	$6.3	10	..	$62.5
210,000 shs.	Central Ill. Lt. com.	1.1	1.6	10	..	15.9
400,000 shs.	So. Ind. Gas & El. com.	..	.5	8	..	4.0
1,436,920 shs.	Ohio Edison com.	1.9	2.3	10	..	23.1
10,663 shs.	Ohio Edison $7 pfd.	.7	..	..	115	1.2
1,162 shs.	Ohio Edison $6 pfd.	..	..	..	109	..
1,365 shs.	Ohio Edison $6.60 pfd.	..	..	..	111*	..
106 shs.	Ohio Edison $7.20 pfd.	..	..	..	116*	..
110,000 shs.	Penn. Pow. com.	.2	.5	10	..	5.4
						$112.1
Southern Properties						
450,000 shs.	Miss. Pow. com.	..	.3	8	..	2.6
$3,080,500	Miss. Pow. ref. 5/55	.1	..	..	104	3.2
3,775,000 shs.	Alabama Power com.	.7	1.8	10	..	17.8
340 shs.	Alabama Power $5 pfd.	..	..	..	81	..
5,282 shs.	Alabama Power $6 pfd.	.1	..	..	93	..
5,680 shs.	Alabama Power $7 pfd.	..	..	..	103	..
2,500,000 shs.	Georgia Power com.	.7	2.0	10	..	20.3
45,430 shs.	Georgia Power $5 pfd.	.2	..	..	80*	3.6
7,856 shs.	Georgia Power $6 pfd.	.1	..	..	98	..
$34,231,000	Georgia Power ref. 5/67.	1.7	..	..	107	36.6
410,000 shs.	Gulf Power com.	.1	.2	8	..	1.4
$1,157,000	Gulf Power ref. 5/68	.1	..	..	104	1.2
$810,000	Gulf Power 5% loan	.1	..	..	..	..
600,000 shs.	So. Caro. Pow. com.	..	.2	8	..	1.9
$5,261,000	So. Caro. Pow. ref. 5/57	.2	..	..	103	5.4
$300,000	So. Caro. Pow. 5% loan.	..	..	..	100*	.3
94,001 shs.	Tenn. Util. com.	..	..	..	..	8.6**
$5,852,404	Transport. Sec. Inc. 6/56	..	..	..	50*	2.9
$6,949,628	General Corp. 6% note	..	..	..	50*	3.5
						$109.3
	Total					$221.4

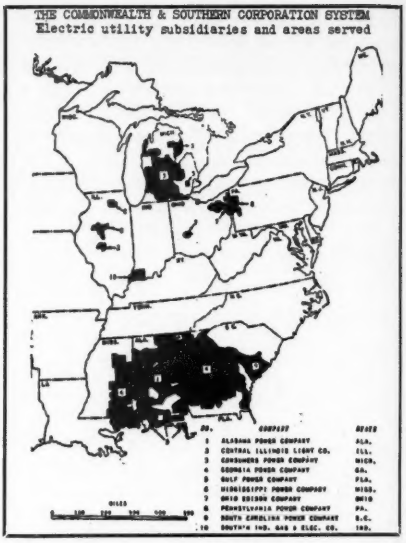
*Estimated.

**This company was organized to handle the sale of the properties of Tennessee Electric Power Company and Southern Tennessee Power Company to TVA and various municipalities, for approximately $78,600,000. Of this amount about $72,000,000 was used to retire Tennessee Electric bonds and preferred stocks at par, leaving a balance of about $6,600,000. In addition to this cash, the company (or the Tennessee Electric Power Company in liquidation) controls Tennessee water, ice, traction, bus, and telephone companies which are here arbitrarily valued at $2,000,000. No report has been issued by the company.

of Commonwealth's investments in its subsidiaries (see Table I) the financial picture may be summarized as follows (as of December 31, 1939, in millions of dollars):

	Estimated Liquidating Value	*Total Amount*
Northern group		
Michigan property	$62.5	
Ohio property	24.3	
Other properties	25.3	$112.1
Southern group		
Georgia property	$60.5	
Alabama property	17.8	
Other southern properties	31.0	109.3
Net current assets of parent company		21.8
Total assets, estimated liquidating value		$243.2
Funded debt assumed by parent company (at par)		51.9
Balance		$191.3
Preferred stock (@ $100 dissolution value, plus dividend arrears of $17.25)		175.9
Balance		$ 15.4

As indicated in Table I, the above estimates are based on market values of senior securities held, and on a multiple



of 8 to 10 times the 1939 equity earnings for the common stocks.

The sale of the important Tennessee properties to the TVA last spring left Commonwealth's total investment almost equally divided between the northern and southern groups.

Based on the estimated liquidating

Table II

EARNINGS RECORD

	System Basis			*Parent Co. Basis*		
	No. Times Charges Earned	*Earned Per Share*		*Earned on*	*Paid on*	*Earned on*
		Pfd.	*Com.*	*Pfd.*	*Pfd.*	*Com.*
12 Months Ended Sept. 30, 1940	$1.37	$8.96	$ .13	..	..	..
*Cal. Year 1939	1.37	8.94	.13	$5.03	$3.00	D.04
*1938	1.28	6.80	.04	3.97	3.00	D.09
1938	1.30	7.91	.09	3.97	3.00	D.09
1937	1.39	10.08	.18	4.84	3.00	D.05
1936	1.34	8.90	.13	3.24	3.00	D.12
1935	1.23	6.27	.01	3.95	3.00	D.09
1934	1.18	4.96	D.05	4.21	6.00	D.08
1933	1.21	5.66	D.01	5.36	6.00	D.03
1932	1.33	8.88	.13	7.91	6.00	0.9
1931	1.59	14.91	.40	14.57	6.00	.38
1930	1.84	19.15	.60	19.14	**3.00	.62
1929	1.84	20.25	.69	..	..	..

D—Deficit.

*Excluding Tennessee properties sold to TVA and municipalities (1938 is shown on both bases, for comparison).

**Represents dividends paid following elimination of holding companies.

value of all Commonwealth assets, the equity for the preferred stock (1,500,000 shares) works out at about $117 per share, and for the common stock (33,673,328 shares) about 46 cents per share. At its current market price around 50 the preferred is selling at less than half the estimated liquidating value; the common, around ¾, is selling at about twice such estimated value. Based on the $3 current dividend rate (paid regularly since 1935) the preferred now yields about 6 per cent.

OF the $15,700,000 estimated equity in subsidiaries' 1939 earnings, Commonwealth actually received only about $8,700,000, or a little over half (plus interest and preferred dividends amounting to about $3,100,000). This accounts for the fact (as indicated in Table II) that in 1939 only $5.03 was earned on Commonwealth preferred (on a parent company basis) compared with $8.94 reported on a system basis. This result is not due (as is the case with some other large holding companies) to dividend arrears on subsidiaries' preferred stocks, but rather to retention of a substantial part of the earnings in subsidiaries' hands to finance improvements, or for other corporate purposes.

This conservative policy has helped to build up a very strong cash position—the consolidated system's balance sheet at the end of 1939 showed cash assets of about $60,840,000 and total current assets of $87,679,000, compared with current liabilities of only $28,022,000. Commonwealth is planning to increase installed system capacity 22 per cent by 1942, compared with 1939; in view of some past difficulties with the SEC over financing of new construction requirements, it is possible that some of this cash may be needed for the prospective construction program.

Other reasons why only half the regular preferred dividend rate has been paid since 1935 are as follows: (1) System depreciation charges are now nearly twice as big a percentage of revenues as in 1929 (11.6 per cent in 1939, compared with 6.0 per cent in 1929), and (2) electric rate reduction has been a long-continued policy of Commonwealth subsidiaries, resulting in an average system residential kilowatt-hour rate about 25 per cent below the average for the entire electric industry; and (3) it was necessary to conserve cash because of the difficulty of raising money for the southern properties. While Commonwealth may be moderately "vulnerable" to any strict interpretation of the geographic requirements of § 11, security holders would seem to have relatively little to worry about so far as intrinsic values are concerned. Eventually, it seems probable that a larger proportion of subsidiary earnings may be "drawn down" by the parent company, permitting larger dividends to its own stockholders.

Refunding Operations Gain

RECENT new financing included the $53,000,000 Boston Edison first 2¾s of 1970 and the $100,000,000 Appalachian Electric Power financing ($70,000,000 first 3¼s and 300,000 shares of 4½ per cent preferred).

The $50,000,000 Detroit Edison 3s of 1970 were filed with the SEC December 13th, for public offering through a syndicate headed by Coffin & Burr, Inc. The SEC did not raise the old issue whether the company is a subsidiary of the North American system (scheduled to come up for trial next March). The bonds were offered December 19th—a very quick release—and met with a good reception.

The Panhandle Eastern Pipe Line proposed $22,500,000 refunding operation has encountered serious difficulties owing to the unsettled relationships with Columbia Oil & Gasoline, etc. The SEC has also held up the refunding and merger application of Hudson River Power Corporation and System Properties (affiliated with International Hydro Electric and International Paper & Power Company).

Commonwealth Edison is reported planning the refunding of $100,000,000 3½s, a portion of which are held by insurance companies.

INTERIM EARNINGS PER SHARE*

	End of Period	12-month Period 1940	1939	Incr.	3-month Period 1940	1939	Incr.
Electric and Gas Companies							
American Gas & Elec. Consol.	Oct.	$2.95	$2.53	16%	..	..	..
Amer. Power & Lt. (Pfd.) Consol.	Sept.	7.09	5.60	26	$1.57	$1.46	8%
Amer. Power & Lt. (Pfd.) Parent Co.	Sept.	4.99	4.47	12	1.18	1.12	5
American Water Works Consol.	Sept.	1.30	.62	110	.12	.26	D54
American Water Works Parent Co.	Sept.	.45	.38	18	.08	.12	D33
Boston Edison Parent Co.	Sept.	2.40	2.48	D 3	.47	.39	20
Cities Service P. & L. (Pfd.) Consol.	Sept.(a)	25.70	25.71	..	5.87	6.97	D16
Commonwealth Edison Consol.	Sept.	2.30	2.36	D 3	.42	.55	D24
Commonwealth & Southern (Pfd.) Consol.	Oct.	8.75	8.73	..	..	..	..
Commonwealth & Southern (Pfd.) Parent Co.	Sept.	5.00	..	..	..	..	..
Consolidated Edison, N. Y. Consol.	Sept.	2.23	2.18	3	.35	.33	6
Consolidated Edison, N. Y. Parent Co.	Sept.	2.15	2.12	2	..	..	..
Cons. Gas of Baltimore Consol.	Sept.	4.83	4.70	3	.83	1.02	D19
Detroit Edison Consol.	Oct.	8.09	7.85	3	..	..	..
Electric Bond & Share (Pfd.) Parent Co.	Sept.	6.37	6.68	D 5	1.56	1.62	D 4
Elec. Power & Lt. (1st Pfd.) Consol.	Sept.	8.90	5.35	66	.40	.08	400
Elec. Power & Lt. (1st Pfd.) Parent Co.	Sept.	1.76	.58	204	.40	.23	74
Engineers Public Service Consol.	Oct.	1.57	1.53	3	..	..	..
Engineers Public Service Parent Co.	Oct.	.57	.61	D 6	..	..	..
Federal Light & Traction Consol.	Sept.	2.24	2.64	D15	.31	.53	D48
Inter. Hydro-Elec. (Pfd.) Consol.	Sept.	1.66	10.96	D84	D3.38	D1.27	..
Long Island Lighting (Pfd.) Consol.	Sept.	4.88	5.69	D14	1.86	1.79	4
Long Island Lighting (Pfd.) Parent Co.	Sept.	5.70	5.07	12	..	..	..
Middle West Corp. Parent Co.	Sept.(a)	.35	.25	40	.15	.08	87
National Power & Light Consol. (b)	Oct.	1.36	1.07	27	..	..	..
National Power & Light Parent Co.	Oct.	.66	.49	35	..	..	..
Niagara Hudson Power Consol.	Sept.	.56	.55	2	.10	.05	100
North American Consol.	Sept.	1.99	1.94	3	.35	.41	D15
Nor. States Power (Del.) Consol. (Cl. A)	Sept.	3.35	.49	585	..	..	..
Pacific Gas & Electric Consol.	Sept.	2.79	2.83	D 2	..	..	..
Public Service Corp. of N. J. Consol.	Oct.	2.43	2.94	D17	..	..	..
Southern California Edison	Sept.	2.19	2.46	D11	.71	.85	D16
Standard Gas & Elec. (Pr. Pfd.) Consol.	Sept.	8.66	5.65	53	D2.65	D1.21	..
Standard Gas & Elec. (Pr. Pfd.) Parent Co.	Sept.	2.24	1.04	115	.16	D .14	..
United Gas Improvement Consol.	Sept.	1.03	1.06	D 3	.22	.25	D12
United Gas Improvement Parent Co.	Sept.	.97	.97	..	.23	.24	D 4
United Lt. & Power (Pfd.) Consol.	Sept.	7.89	5.95	32	..	..	..
United Lt. & Power (Pfd.) Parent Co.	Sept.	4.48	1.47	205	..	..	..
Gas Companies							
American Light & Traction Consol.	Sept.	1.70	1.56	9	..	..	..
Brooklyn Union Gas	Oct.(e)	2.03	2.47	D18	..	..	..
Columbia Gas & Electric Consol.	Sept.	.51	.52	D 2	D .20	D .08	..
El Paso Natural Gas Consol.	Oct.	3.19	4.03	D21	..	..	..
Lone Star Gas Consol.	Sept.	1.13	1.05	8	D .13	D .00	..
Oklahoma Natural Gas Consol.	Oct.	3.75	2.10	78	..	..	..
Pacific Lighting Consol.	Sept.	2.74	4.20	D35	..	..	..
Peoples Gas Light & Coke Consol.	Sept.	5.24	2.88	182	D .08	D .48	..
United Gas Corp. (1st Pfd.) Consol.	Sept.	13.94	9.48	47	.44	.46	D 4
United Gas Corp. (1st Pfd.) Parent Co.	Sept.	9.25	9.42	D 2	.95	.87	9
Telephone and Telegraph Companies							
American Tel. & Tel. Consol.	Aug.	10.92	9.43	16	2.38	2.35	1
American Tel. & Tel. Parent Co.	Sept.	9.78	8.88	10	2.37	2.40	D 1
General Telephone Consol.	Sept.	2.81	..	..	..	..	..
Western Union Telegraph	Oct.(e)	2.60	.91	185	.67	.83	D19
Systems outside United States							
Amer. & Foreign Pwr. (1st Pfd.) Consol.	June	5.74	5.41	6	1.50	1.23	22
Amer. & Foreign Pwr. (1st Pfd.) Parent Co.	June	3.06	1.61	90	.42	.33	27
Inter. Tel. & Tel. Consol. (d)	June(c)	D .02	.21	..	D .08	.17	..
Inter. Tel. & Tel. Parent Co.	June(c)	D .10	D .02	..	D .01	.03	..

D—Deficit or decrease.

"Consol." indicates consolidated income statement, including subsidiaries.

*On common stock unless otherwise indicated after name of company.

(a) Nine months ended September 30th.

(b) Parent company statement available for twelve months ended June 30th showed $.63 *v.* $.51.

(c) Six months ended June 30th.

(d) Excludes Spanish, German, and Polish properties.

(e) Ten months to October 31st.



What Others Think

Electric Power and the National Defense



THE first report on the "Electric Power Requirements and Supply in the United States," submitted to President Roosevelt last month, is an interesting factual document. But those seeking information on the true state of the nation's power reserves from a national defense viewpoint might well go to the document itself, rather than depend too much on a summary of its contents, which was contained in the letter of transmittal sent to President Roosevelt by Chairman Leland Olds of the FPC. In other words, the actual survey conducted by the FPC seems to have been diligently and fairly conducted under the immediate supervision of Chairman Olds. The report thus bears out an advance impression which was widespread within the electric power industry.

In a conservative statement contained in the report, there occurs the following admonition: "No attempt is made in this report to arrive at conclusions respecting the adequacy or inadequacy of power supply in the various areas." But in his letter to the President, Chairman Olds comes pretty close to making, not only a conclusion, but a fairly definite forecast. He stated that he found indications in the report that in 1942 "the aggregate deficiencies in the available generating capacity in certain areas will probably exceed 1,500,000 kilowatts."

Furthermore, Chairman Olds uses the report as a vehicle for getting in some good plugs for Federal power projects, the basis for which is not obvious from an examination of the report itself. For example, in discussing one prospective deficient area—upper New York state—Chairman Olds in his letter stated that it "will be supplied by the proposed St. Lawrence development." This statement gives no apparent weight to the fact that power could not be made available at the St. Lawrence project in less than four years, during which period the peak of the defense load will certainly have arrived, if indeed it will not have passed.

OTHER proposed developments, including the Clark Hill project on the Savannah river, are pictured as sources to relieve critical power situations. This project would take at least three years to produce even if work were begun on it tomorrow. Again, it is probably true that neither privately owned utilities nor publicly owned utilities can now increase respective generating capacities very much beyond existing schedules. This is for the simple reason that factories making the necessary equipment are already well loaded with orders—many of them involving direct defense orders, such as ship turbines.

Actually, the potential shortage feared by Chairman Olds is founded upon a series of assumptions: (1) That adverse conditions such as low water will blanket the country all at the same time; (2) that power requirements will increase at least as rapidly as in recent years; (3) that future power loads will necessarily boost previous peaks. There is a reasonable basis for such a conservative estimate as long as it is understood that it *is* a conservative estimate—arrived at for the purpose of getting a picture of the more or less irreducible minimum of assured capacity. But when one speaks of "probabilities," the premise drawn from this report would seem to be unreasonably pessimistic.

Actually, the Federal Power Commission report does not show such a bad state of affairs as the casual reader of Chairman Olds' letter to President Roosevelt might suspect. The report is drawn up

in the form of a series of charts for 48 geographical subdivisions of the continental United States. These charts purport to show the relationship between power loads and the capacity available to supply them. The conservative basis for the report's computation of "net assured capacity" is shown in the following excerpt from the preliminary statement:

> The net assured capacity curves indicate the reported capacity available from fuel and hydroelectric plants, after deducting the reserves reported and after allowing for the net effect of firm capacity interchanges. Capacities shown are based on critical water conditions as they affect hydroelectric generating plants. In areas where a considerable proportion of the power supply is generated at hydroelectric plants, larger loads than are indicated can be met during periods of normal stream flow. Reserve requirements reported by the various systems differ considerably due to methods of operation, the degree of interconnection, and interchange agreements. Because of the foregoing considerations and other factors, the additions to generating facilities shown for 1941 and 1942 are not necessarily reflected at name plate ratings in the net assured capacity curves on the charts.

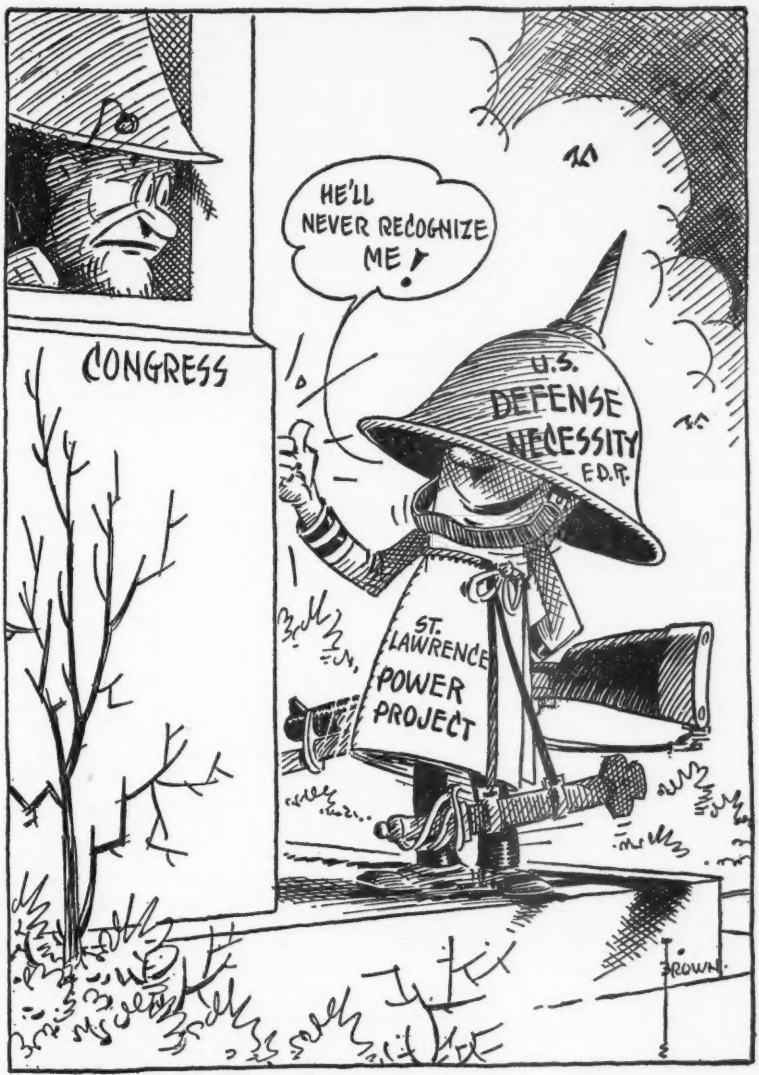
THE margin of reserve capacity over and above "net assured capacity" shown on the charts indicates a fairly safe leeway in excess of mounting power trends in most instances, all other factors considered. Of course, the power industry cannot use its "reserve" and have it too. A spare tire which is once put into service is no longer on the rack, available for future emergency. In other words, the industry cannot and should not depend on its reserve capacity for routine operations; but the presence of such reserves does show a substantial cushion against actual shortage.

The upper New York state situation, mentioned by Chairman Olds in connection with the proposed St. Lawrence project, is separated on one of the charts from the downstate area, which seems to include the metropolitan district of New York and Long Island. In addition to the two plats showing the respective conditions in this division of New York state, there is a third plat averaging New York state as a whole. This does not look very bad at all.

There are other thin spots, notably in the Chicago area, which are revealed in the report. Chairman Olds summarized these in his letter to the President. They are as follows: Upper New York state; the Philadelphia region, including eastern Pennsylvania and New Jersey; the Pittsburgh region, including western Pennsylvania; the Chicago and northern Illinois and northern Indiana districts; St. Paul and eastern Minnesota; southeastern states, including Tennessee valley area, North and South Carolina, Alabama, and Georgia; Arkansas, northern Louisiana, and western Mississippi; Idaho and Utah; San Francisco and the northern California and southern Oregon region.

IT is conceded that one of the most important raw materials for the national defense is the electric power needed to drive the machines which will produce the vast array of goods for the Army, Navy, and air force. A recent survey by Fitch Investors Service gives some interesting sidelights on this angle:

> The rising demand is reflected in the new high records of electric power production that have been established almost every week recently. In the week ended November 2nd output reached 2,734,402,000 kilowatt hours, an all-time high and 7.8 per cent above the corresponding period of 1939. It was 23,100,000 kilowatt hours greater than the record of the previous week, when for the first time in the history of the electric utility industry, the weekly production exceeded 2,700,000,000 kilowatt hours. The central industrial area of the country led the increase, as might be expected, the gain there amounting to 10.3 per cent over the 1939 period, following a 9.2 per cent advance in the preceding week. The Southern states came next, with a 10.1 per cent gain over last year, followed by the Middle Atlantic states with 7.3 per cent, the West Central states with 6.5 per cent, and New England with 6.1 per cent. The Pacific coast states showed the smallest gain, averaging 2.7 per cent, while the only loss was in the Rocky Mountain states, which dropped 0.8 per cent below the like interval in 1939.
>
> The impact of the rising volume of armament orders may be traced through the steady upward surge of power output during the past three months, from 2,604,727,000 kilowatt hours in the week ended August 2nd to the latest record. Each week during that time has brought an increase over the



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corresponding 1939 week, varying from 6.8 per cent to 12 per cent, and averaging 8.4 per cent for the twelve weeks. The upward trend started in May, following the seasonal pattern of past years, but far in excess of any in the last decade, and coincided with the weekly increment of defense contracts from that time to the present.

Production in July aggregated 12,091,000,000 kilowatt hours, and in August it reached 12,443,000,000, compared with 10,651,000,000 and 11,228,000,000, respectively, in the corresponding months of 1939. In September, there was a dip to 11,763,000,000 kilowatt hours, off 3.6 per cent from August, but up 7.5 per cent from September, 1939. For the

twelve months ended September 30, 1940, output was 138,749,000,000 kilowatt hours, a gain of 12 per cent by comparison with the like interval of the preceding year.

Military authorities have long been aware of the importance of an adequate supply of power for the industrial plants of the nation, and have been keeping records based on periodical surveys of the potential and actual power supply, with a view to avoiding the shortages which developed during the World War period. As early as 1935, the Federal Power Commission called attention, in its national power survey report, to the fact that a resumption of industrial activity would lead to shortages in generating capacity, and to the serious implications of such a situation with reference to national defense. From this report there developed intensive surveys by the National Defense Power Committee and the National Power Policy Committee, to keep informed on the adequacy of the power supply, on the needs of the defense industries, and to plan, in coöperation with the utilities, to meet every power requirement in the most economical manner.

Attention was recently called to the rather novel idea of providing floating power plants to replace power supply which might be destroyed by sabotage or enemy action. The General Electric Company is reported to be studying the design of a 50,000-kilowatt plant capable of passing through the New York state barge canal which could be used at locations along either coast or the great Lakes. Such a plant could "service" a community of from 150,000 to 200,000 population.

REFERRING to economic burdens which the national defense program may impose on the electric power industry, Fitch Investors Service continued with the following statement:

That it will be necessary to effect further economies if earnings are to be maintained seems evident from a study of the rising tax burden and the steady reduction in electric rates. It has been estimated that taxes this year will consume about 17 per cent of total gross revenues, compared with 16 per cent in 1939, which will call for larger tax allowances in the second half of the year. The Federal normal tax has been increased to 24 per cent under the new tax bill recently signed, and there has been a 10 per cent increase in the excise tax on energy sales. It is not now thought that the excess profits tax will bear heavily on the industry as a whole, although in some cases provision will have to be made for moderate amounts. In general, the industry has a high proportion of invested capital, giving it the benefit of the exemption provisions. However, the higher normal tax has been estimated to entail increases varying from about seven cents per share to more than one dollar in the cases of 18 of the leading utility systems.

One way by which these increased taxes are being met is the continued refunding of bonded indebtedness. Interest savings this year are estimated at about $15,000,000 for the operating utilities, and further progress along the line of refunding at lower rates is indicated. Labor costs for actual operations are not burdensome, and there has been little in the way of labor trouble in the industry, but the cost of installation of new equipment is likely to be increased by the higher wage rates prevailing for the classes of skilled labor required. While these costs would not have a material effect on earnings over a period of a year or more, they might be a factor influencing the conservation of cash and thus bearing upon dividend policies.

Despite a tax bill estimated at about $460,000,000 in 1940 (an increase of about $50,000,000 over 1939), it is believed that the electric industry will show a gain of about 3 per cent for the year in net income. If new taxes had not appeared, a 12 per cent gain might have been recorded.

SEC Seeks State Commission Coöperation

WHAT are the possibilities of conflict between the state regulatory commissions and the Securities and Exchange Commission? This was the question which engaged the attention of Commissioner Robert E. Healy of the SEC in his opening address before the Committee on Corporate Finance at the recent annual convention of the National Association of Railroad and Utilities Commissioners in Miami, Florida.

Obviously, there could be no conflict in the field of rate making since the SEC has no such jurisdiction, although

its decisions might indirectly affect rates. In the field of accounting, the SEC has not attempted to promulgate classifications for operating subsidiaries of utility holding companies. This restricts the area of possible conflict to accounting matters growing out of the relationship between parent and subsidiary.

Commissioner Healy saw no prospect of difficulty between the state and Federal bodies arising out of the regulation of holding companies—inasmuch as the need for Federal regulation of holding companies resulted from the jurisdictional limitations of the state commissions to deal with parent-subsidiary relationships affecting utility consumers during the last two decades.

Continuing his process of elimination, the speaker found no chance of conflict in the Federal regulation of service companies, since the latter are generally beyond the jurisdiction of the state commissions. As for the acquisition of utility assets, that is a matter exempt from the necessity for SEC approval where such acquisition has once been authorized by a state commission.

THE field of possible state-Federal conflict is thus narrowed down to four sectors: (1) New utility security issues; (2) sale or acquisition of operating company securities or properties by a holding company; (3) consolidations and mergers; (4) accounting incident to the other three classes.

As a matter of practical procedure, in exploring this area of possible conflict, Commissioner Healy first analyzed the two alternative security issue sections of the Holding Company Act, §6(b) and §7. Section 6(b) is the exemption approach. It exempts security issues from the requirements of §7 where the issue is by a utility company and for the sole purpose of financing its business, and where the transaction has been approved by the regulatory commission of the state of the company's operation and organization. Where these conditions are met, the SEC may only impose "terms and conditions." Where these requirements are not met, the SEC must measure the security application by the more curtailed standards of §7.

Because of the fact that 32 out of the 47 states having regulatory commissions (including all the larger and more important states) have authority to regulate security issues of gas and electric utilities, this exemption procedure under §6(b) becomes of importance. How, then, has the SEC in such cases acquitted itself of its limited power to impose "terms and conditions"? Commissioner Healy stated on this point:

> . . . Whatever the extent of that power may be, the commission has imposed important restricting conditions in relatively few cases. In nearly every instance before imposing conditions, except those designed to insure compliance with the state commission's order, we have informed the state commission of our views and requested their comments. In some of these cases under this authority we have been able to impose conditions which the state commission had also thought necessary but was unable to impose because it lacked authority. A danger is that in some cases the state body, having authority, will fail to condition its approval because of a feeling that the SEC will do so. We, then, being ignorant of its motive, interpret its failure to attach the condition as an indication that the state body opposes it and thus hesitate, out of respect to the state body, to attach the condition. As a consequence, a condition necessary for the protection of investors might not be imposed. This could arise only out of a misunderstanding. If we were apprised of each others feelings this situation would not arise. Of course, I do not mean that if we conclude that a condition must be imposed for the benefit of investors or consumers that we ought not to do so simply because the state commission failed to impose a similar condition. We have an independent obligation in examining security issues to determine whether terms and conditions to the extent required by §6(b) of the act ought to be imposed.

AND so the speaker made the suggestion that, in dealing with "tough" cases, informal Federal-state consultation will be found useful. Then the SEC would know to what extent the state commission had looked into property accounts, depreciation, fees, necessity for financing, and so forth. Likewise, the state boards might well give recognition to factors which the SEC is required to

consider under the Holding Company Act.

For example, assume that an operating company proposes to issue securities and sell them to its parent. It represents to the SEC that the state body has approved the transaction. The SEC must then consider not only the issue by the subsidiary but the acquisition by the parent—thereby introducing a new regulatory factor for which the state body usually has no responsibility. And it is not a factor that can be considered lightly in view of the duty imposed upon the SEC under §11 and other sections regarding the soundness and integrity of holding company systems.

So far the SEC has not imposed additional accounting requirements on operating companies (although it might do so under the act to an extent not inconsistent with those prescribed by other state and Federal agencies). The SEC has left this to the state commissions and to the Federal Power Commission. It has confined its accounting requirement to aspects with which the states have no concern—holding company and service company accounting. In a very few instances, the SEC has conferred with state commissions on questionable accounting entries, with favorable results.

Commissioner Healy stressed the need for such coöperation in connection with the sale by a holding company of outstanding equity securities of its subsidiaries. Such sales of stock already outstanding usually do not require further state approval. Yet, the SEC has a remaining responsibility as to price. The views of the state commission as to future earning prospects or possible rate changes might be valuable in determining this matter. The SEC recently had such a case. A security sale was approved by the SEC after a state commission had informally disclosed that it was not contemplating any immediate rate changes for the utility system involved.

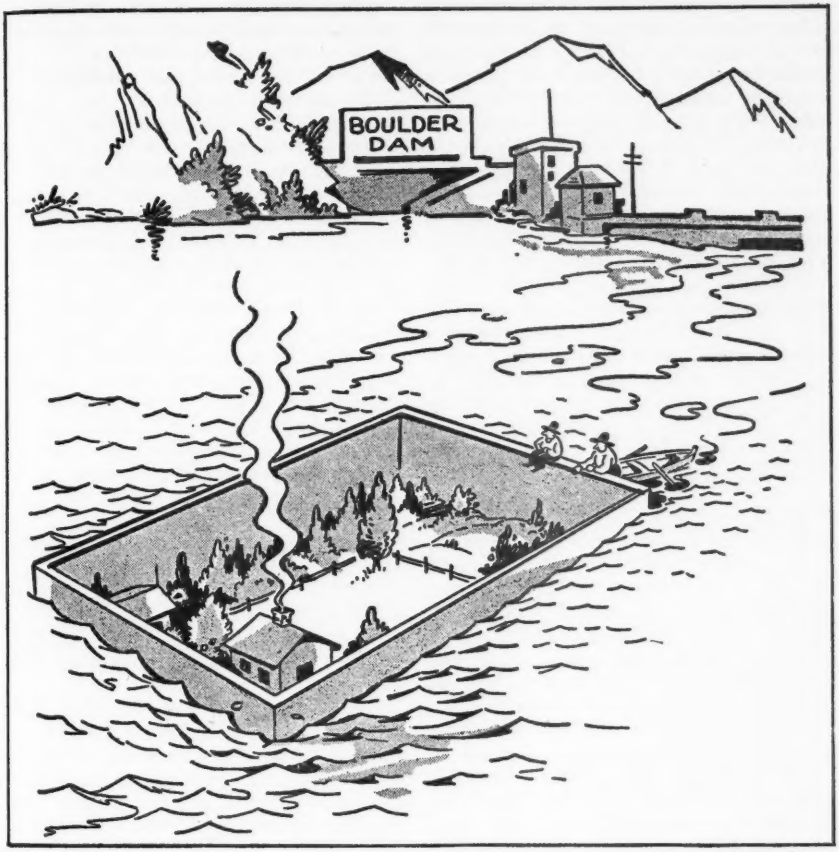
EITHER formal or informal representation by the state commissions (which are given routine notices) is available. The speaker referred to a recent case in which the Vermont commission had found that the special Federal powers of the SEC were of considerable value by way of investigating servicing arrangements between local utility companies and associate service companies organized beyond the boundaries of Vermont. Commissioner Healy concluded his address by inviting the state commissions to make further use of coöperative arrangements, formal and informal. He expressed the willingness of the SEC to do its part:

> Whether you agree with all I have said or not, I do earnestly insist that we have no desire to encroach upon the powers of the state commissions. We do wish to support effective state regulation by taking the predatory type of holding company and service company off the backs of the operating companies; to see to it that the control of operating companies within your states, if it must be continued in the hands of holding companies, will not so continue unless holding companies make actual and substantial contributions to the capital of its subsidiaries; that holding companies through manipulation will not acquire control of large amounts of securities of your operating companies at no cost or very little cost; that a nation-wide system of private socialism will not be promoted through concentration of ownership and control of a great many operating companies in a few corporations. And above all, I do not want to give you the impression that we resent criticism. Unhappily, despite the best of intentions we undoubtedly contribute at least our share to the sum of human mistakes. It is desirable to have our mistakes pointed out to us. We shall accept fair criticism.

In short, the speaker voiced the conviction of the entire SEC membership that effective regulation of utilities in the public interest will be furthered by extended coöperation by the SEC and the state commissions.

—F. X. W.

OPENING STATEMENT. By Commissioner Robert E. Healy, Securities and Exchange Commission, before the Committee on Corporate Finance, 1940 annual convention, National Association of Railroad and Utilities Commissioners. Miami, Fla. December 12, 1940.



Courtesy, Collier's — *M. E. Clarke*

"HE WAS STUBBORN AN' WOULDN'T SELL"

Folklore of Holding Companies

WHEN the Utility Holding Company Act was passed in 1935, a number of Congressmen made speeches to the effect that the American people had been robbed of $16,000,000,000 in 1929 by holding company promoters, bankers, and speculators. This estimate was also used by Mr. Eicher, now an SEC commissioner. The figure so widely used was based on a small table prepared by the Federal Power Commission in which the 1929 high-scale prices of all bonds and stocks of utility holding companies were computed at $19,245,157,757; whereas on February 28, 1933, the same securities had a market value of $2,879,034,949, and of $2,285,015,979 on April 9th. The statistically minded Congressmen merely deducted one figure from another and assumed that the public had been mulcted of the difference.

The obvious fallacy of this assumption is pointed out in a 20-page analysis by Dean John T. Madden and Instructor

Jules Backman of New York University (*Journal of Business* of the University of Chicago, July, 1940). In the first place they point out the fact that holding company values (taking each item at the peak price for the year, whenever that occurred) added up to $19,000,000,000 did not mean that these securities had been sold to the public at that figure. New money raised through sale of common stocks by the holding companies in 1929, they estimate, amounted to only $735,000,000, or less than 5 per cent of the $16,000,000,000 figure. Moreover, the holding companies in their balance sheets gave a stated value for their own common stocks (and surplus) of only $4,171,700,000 and even this figure would involve considerable duplication, since securities were held by other companies included in the tabulation.

THE figures compiled by the FPC including duplicate values were due to intercompany holdings, which Messrs. Madden and Backman estimate at about $2,000,000,000. Moreover, the aggregate figure of $19,245,157,757 did not reflect sales to *investors* but was based largely on speculative turnover. A careful study of the trading in typical holding company securities during the entire year 1929 indicates that only a maximum of about 80 per cent of the outstanding shares (less intercompany holdings) of the selected companies could have been purchased by long-term investors in that year; and if complete adjustment could be made for in-and-out trading, probably only a very small proportion of the holding company stocks was acquired by investors—the major portion having been acquired at lower prices in earlier years.

Only one-fortieth of one per cent of the outstanding number of shares of these selected holding companies were traded at the peak price established at 1929, and over half of this percentage was accounted for by two companies. There were five issues in the tabulation for which the high price was established with a transaction of only 100 shares. Senator Barkley, of Kentucky, in the Senate debate over the bill, is quoted as saying that in 1929 hundreds of thousands of shares of Associated Gas and Electric were bought by the public at $72.50 per share, whereas the market record indicates that at the peak price of 72⅝ only 500 shares were traded. The authors conclude that, with allowance for in-and-out trading, only a fraction of one per cent of the outstanding shares of these holding companies were bought by investors on the days when the peak prices were established.

Thus, by no stretch of the imagination can the $19,000,000,000 figure be regarded as the purchase price paid by investors, and most of the huge "losses" encountered in subsequent years represented the elimination of purely paper profits.

The thoroughgoing statistical analysis prepared by Dean Madden and Mr. Backman unfortunately comes five years too late so far as the passage of the Utility Act is concerned, but is nevertheless valuable as helping to "debunk" one of those statistical fallacies so dear to the hearts of Congressmen. The exposé of such New Deal "folklore"—to borrow a term made popular by Assistant Attorney General Arnold—is a valuable aid to constructive thinking on the utility question.

A Forecast for Rail, Sea, and Air Transport Union

A PREDICTION that the Federal government will find it necessary eventually to create a permanent agency which would provide "leadership" and coördination in solving transportation problems was made at Buffalo, New York, recently by Joseph B. Eastman, chairman of the ICC.

WHAT OTHERS THINK

Speaking before the Transportation Club of Buffalo, the former Federal Coördinator of Transportation expressed the opinion that the new board of investigation and research set up by the Federal Transportation Act of 1940 would merely assemble facts and conclusions upon which a permanent plan might be based. Mr. Eastman said:

> The lawmakers of the government may be helped by the information which the new board is expected to develop, but I doubt whether with the Transportation Act of 1940 we have reached the end of transportation legislation.
>
> The conclusion might be reached, after the board has made its report, that it is desirable to have, in lieu of special and sporadic investigations of transportation matters, a permanent agency not burdened, as the Interstate Commerce Commission is, with a mass of regulatory duties.
>
> The new permanent group would be equipped to continue the study of the broader phases of the transportation problem. It would be available at all times for advice and help, not only to the President and Congress, but also to the carriers and shippers.
>
> While we leave the management of the carriers to private enterprise, only the government, as I see it, is in a position to supply disinterested leadership with respect to transportation in its entirety.

CHAIRMAN Eastman said he thought the new board of investigation and research, in its coming survey of the transportation problem, would uncover conditions now hidden from, but harmful to, the carriers, but which the carriers could correct "of their own volition." He said he hoped that the facts produced would enable the carriers to discover "opportunities for joint operations" which would enable them to give better service to the public.

Mr. Eastman said:

> The idea of joint operations suggests a possibility of the future which some expect will in due time become a reality. They look forward to the day when we shall have, not railroad companies or other operators of one particular type of carrier, but transportation companies operating all types, able to give the public any kind of service it wants, and utilizing every means of carriage singly or in combination as the demands of economy and efficiency may require. Already the railroads have progressed in this direction.

Mr. Eastman renewed his plea for establishment by the railroads of a centralized department for scientific and engineering research, and for improvement by the railroads of the handling of "less-than-carload" or package freight. He stated:

> I sometimes wish that the railroads would be rather less extreme in their claims with respect to such matters as rates, valuations, the depredations of the director general of railroads during the period of Federal control, and now the subsidies of their competitors. Their technique seems to be to shoot at the stars in the hope that they may hit the moon.

Speaking on the same program, Thomas M. Woodward, vice chairman of the Maritime Commission, told the Transportation Club that his agency was permitting the sale only of old ships which can be spared, while building new ships to replace those sold and to give us "a modern and efficient merchant fleet, useful in war as in peace."

DETERMINING as early as January, 1939, not to be "caught short" the way the merchant marine was in 1917, Mr. Woodward explained, the commission accelerated its construction program and arranged for enlarged shipbuilding facilities. As a result, today five navy yards are producing vessels, two on the Gulf and three on the Pacific coast. The number of ships ordered in 1939 was jumped from 50 to 96.

Today, Mr. Woodward disclosed, there are 179 vessels under contract, of which 73 have been launched. Fifty-one of those launched have been delivered and put into service. Mr. Woodward told the club members that new ships of the American merchant marine had taken over much of the trade of foreign fleets of some of the belligerent nations taken off their normal trade routes to fill the increased war needs of their home countries. Mr. Woodward said that the Maritime Commission's program benefits the nation's economy as well as defense. It has made jobs on every coast where there are shipyards and in every city where there are tributary industries.



The March of Events

NARUC Convention

FEDERAL encroachment and national defense, with respect to utilities and utility regulation, were the two controversial topics featured at the recent annual convention of the National Association of Railroad and Utilities Commissioners, which opened at the Miami Biltmore Hotel in Miami, Florida, December 10th.

Fear of Federal domination was sounded at the opening session of the convention in the address by the retiring president, Harry Bacharach, who also heads the New Jersey commission. Not Congress but the bureaus and commissions it has created were blamed by President Bacharach for the invasion of rights of state regulatory bodies. "Absentee landlordism everywhere has proved disregardful of local interest and ill in consequences," he said. "I cannot escape the conclusion that absentee governmental regulation of matters primarily local and only incidentally, insubstantially, and remotely affecting interstate commerce, will for like reasons have like results." He observed that big business has learned that there is a limit to large-scale efficiency and expressed the conviction that "what is true of business is true of expanded centralized governmental administration."

The opening session witnessed nearly 400 state commissioners and staff members in attendance. Welcoming speeches were made by the mayor of Coral Gables, Paul D. McGarry, the mayor of Miami, Alexander Orr, Jr., and the chairman of the host commission, Eugene S. Matthews of the Florida Railroad Commission. Response for the association was made by James W. Wolfe of the South Carolina commission, who succeeded President Bacharach to the presidency of the association.

The commissioners also elected Ray C. Wakefield, of the California commission, to the first vice presidency, and Julian D. James, of the Missouri commission, to the second vice presidency. The association's general solicitor, John E. Benton, was reëlected general solicitor, and Ben Smart of Washington, D. C., was elected secretary to replace Clyde S. Bailey, who recently resigned to enter private practice.

The outcome of the sentiment against Federal encroachment voiced by President Bacharach found expression in a resolution adopted by the convention which directed the executive committee to take such steps as might be necessary to oppose further invasion of Federal bodies into the sphere of state regulatory jurisdiction.

On behalf of Federal regulation, however, there was fairly heavy representation, including Chairman James L. Fly, Commissioners Paul A. Walker and George H. Payne, and Chief Accountant William J. Norfleet of the FCC; Chairman Leland Olds and Commissioners Claude L. Draper, John W. Scott, and Clyde Seavey, Secretary Leon M. Fuquay, and General Counsel W. S. Youngman, Jr., of the FPC; Commissioners Claude R. Porter and William E. Lee of the Interstate Commerce Commission; and Commissioners Robert E. Healy and Edward C. Eicher, and staff members Robert O'Brien, Joseph L. Weiner, and Francis P. Brassor of the SEC. (Commissioner Healy's views on Federal-state coöperation with respect to utility security regulation can be found on page 42.)

The national defense angle was featured by the submission of a report on behalf of the Committee on Progress in Public Utility Regulation by its chairman, Leon Jourolmon, Jr., of the Tennessee commission. This report of more than 150 printed pages analyzed European military history and recent events in the war with a view to showing the close relationship between utility operations and national defense in modern times. The report generally recommended stricter regulation, both Federal and state, and more opportunities for public ownership. It included a letter from Commissioner Healy of the SEC to the effect that active completion of the integration program directed by the Holding Company Act would assist the national defense.

Chairman Fly of the FCC urged the state commissioners to determine exactly the "choke points" in production so speed could be accelerated in defense preparation. Chairman Olds of the FPC said a complete plan for combating attempted sabotage was being sent confidentially to the state commissions and private utility companies.

Reports of the various committees of the association to the Miami convention will be reviewed in the next issue of PUBLIC UTILITIES FORTNIGHTLY.

Urges Power Change

ADMINISTRATION of electric power produced at dams on the Columbia river should be removed from control of the Department of Interior, United States Senator George W.

Norris told Monroe Sweetland, executive secretary of the Oregon Commonwealth Federation, in an interview at McCook, Nebraska, on December 9th.

According to word from Sweetland, Senator Norris said he favored in general the Bone bill providing for unified administration of Columbia river power, but also advocated an amendment to the measure, lifting administrative authority from the Secretary of Interior. Senator Norris was quoted as saying:

"It makes for sounder administration if permanent agencies of this type are made independent of the shifting policies of changing political control, and are administered by men who give their whole time to one project rather than such widely diffused interests as now fall upon the Secretary of Interior. I recognize the single-minded devotion of Secretary Ickes to the cause of public power, but this act should be written for the future and not for the moment only."

The Nebraska lawmaker said hearings on the Bone bill and suggested amendments would be held in Washington, D. C., in January or February, soon after Congress reconvenes.

President's Seaway Plan

PRESIDENT Roosevelt, it was recently reported, hopes to obtain congressional authorization of the Great Lakes-St. Lawrence seaway without risking a Senate rebuff such as he received in 1934 when the treaty with Canada failed of ratification by a wide margin, receiving only 46 votes against 42, with two-thirds required for affirmative action.

Soon after the new Congress convenes it is expected that President Roosevelt will recommend simple legislation authorizing the work needed on the United States side of the boundary, authorization which could be made contingent on the adoption of parallel legislation by the Canadian Parliament. Such legislation would need to pass both houses by a bare majority.

In a statement read on his behalf by A. A. Berle, Jr., Assistant Secretary of State, before the Great Lakes-St. Lawrence Seaway and Power Conference in Chicago on December 5th, President Roosevelt said he would propose to the Congress "that it take the necessary steps toward completion of this St. Lawrence seaway and power project, on which so much of our national safety and welfare depend." He stated further:

"The United States needs, tremendously needs, the power project which will form a link in the seaway in the International Rapids section of the St. Lawrence river to produce aluminum and more aluminum for the airplane program which will assure command of the air. Selfish interests will tell you that I am cloaking this great project in national defense in order to gain an objective which has always been dear to me. But I tell you that it has always been dear to me because I recognized its vital importance to the people in peace and in war."

SEC Insurance Control

PROPOSALS for limited Federal regulation of life insurance companies are expected to result from the comprehensive insurance investigation made by the Securities and Exchange Commission for the Temporary National Economic Committee. Recommendations to this effect, it was learned recently, probably would be prepared by SEC insurance investigators.

The recommendations would be submitted to the TNEC following publication of the SEC staff report on the insurance probe, which is already finished. A confidential summary was given to members of the TNEC last month. A member of the committee said that the report contained no recommendations and was "factual." He added, however, that it deals with the "inadequacy of state regulation."

The report, it was said, would highlight critical testimony concerning life insurance companies and management practices which was placed before the TNEC during public hearings. It would not contain any new charges against life companies.

In recommendations of the SEC insurance committee, which were to follow the staff report and would be based upon it, a main point was expected to be proposed enactment of "stop-gap" legislation providing limited Federal control of life insurance companies with interstate businesses. More comprehensive legislation, it was felt, should await further investigation into the aspects of other types of insurance business.

ICC Curbs on Trucks Opposed

OPPOSING further control by the Federal government of commercial motor vehicles, a committee of representatives of 10 northeastern states, meeting in New York city last month, adopted a report on uniform standards and held there was no need for regulations by the Interstate Commerce Commission.

The report, which was sent to the ICC, reflected the views of the 10 states on sizes and weights of motor trucks, as outlined by a continuing committee of the fifth Regional Highway Safety Conference. William D. Denny, former governor of Delaware and now motor vehicles commissioner of that state, was chairman of the committee.

The ICC regulates hours of service of truck operators and minor equipment standards. The committee's study and report were prompted by the recent issuance of several ICC reports which, according to committee members, indicated that the commission was contemplating Federal regulation of sizes and weights of trucks.

It was argued that the construction and maintenance of highways were state responsibilities, that the cost fell on the states, and that it was the right of the states to regulate the sizes and weights of trucks using the highways.

The entry of the Federal government into such regulation, it was asserted, would be duplication of control and a waste of public money. It was said also that Federal regulation would require "an army of personnel" to patrol the highways.

EX-TVA Chief's Dismissal Upheld

THE Sixth U. S. Circuit Court of Appeals last month upheld dismissal of Arthur E. Morgan as chairman of the Tennessee Valley Authority. Affirming lower court dismissal of Morgan's suit in which he sought recovery of $4,583.33 allegedly due in salary, Judge C. C. Sivons of Detroit cited a Supreme Court case which said:

"The power to remove executive officers appointed by the President is conferred upon him by the Constitution and so may not be abrogated by statute."

Morgan, president of Antioch College, Yellow Springs, Ohio, was removed by President Roosevelt on March 23, 1938, for "contumacy."

Agents of the Dies Committee on Un-Americanism are continuing their investigation of the TVA, Chairman Martin Dies, Democrat of Texas, said recently at Nashville. The committee's next report to Congress would include a special section dealing with the huge government agency, now playing a vital part in the nation's defense program, Dies was quoted as saying.

Arizona

Gives Power Views

GOVERNOR-ELECT Sidney P. Osborn was recently reported to have sent out a lengthy statement to members of the fifteenth state legislature detailing his views on a plank in the Democratic party platform for establishment of an Arizona Power Authority to make contracts for sale of Boulder dam power.

The governor-elect said he desired "prompt legislative action" on the proposition, although the legislators were not supplied with copies of the proposed bill for introduction in the legislature. Osborn wrote the solons:

"If we but have the vision to foresee the tremendous increase in taxable wealth and progress awaiting this undertaking, we will grasp this great opportunity without further delay."

Osborn said three benefits would accrue to Arizona from creation of the power authority. He summarized them:

1. To enable the state to take advantage of its share of a valuable natural resource.
2. To aid one of the basic industries of Arizona, which is agriculture.
3. To aid in the further industrial development of our state so that cheap electrical energy may be made available wherever it can be economically utilized.

California

Higher Wages Asked

ADJUSTMENT in wages of certain classifications of employees in the municipally owned electric utility was asked of the Pasadena board of directors last month by Elmer Mecham, president of the Pasedena labor council. Mecham told the board:

"Defense work has raised the standard of wages in southern California somewhat, and I ask your consideration for adjustment of wage schedules for certain classes of employees."

The utility workers are partly unionized, having an American Federation of Labor affiliation.

Mecham told the board that already some of the employees had left for cities offering high pay and that national defense work might take more skilled men on whom the city has expended money to train.

Meter testers, steam turbine operators and firemen, foremen, electricians, power salesmen, range repairmen, and auto mechanics were included in the classifications for which higher wages were asked.

Governor and TVA Director Confer

GOVERNOR Olson last month disclosed that he had held a preliminary conference with David E. Lilienthal, director of the TVA, on the governor's proposal for a California agency patterned on the Tennessee Valley Authority set-up, to operate the Central Valley Project.

The governor expressed himself as satisfied with Lilienthal's reaction to the proposal and "understanding of the problems confronting the Central Valley Project." He stated:

"I laid before Mr. Lilienthal our ideas and hopes of having a California authority functioning here for the public distribution of the hydroelectric power which will be generated through the Central Valley Project. And I told him that, in the furtherance of this, we might present a request to the Federal government for the setting up of an authority similar to the TVA."

Lilienthal, commenting on his talk with Governor Olson and other state officials, said "they have a very clear conception of the idea of unified development of all the natural resources of this region through the aid of public agencies. This is the basic notion of the TVA. What the President has invented is a broad system for the efficient development of public resources. . . . It is very heartening to learn at first-hand of the attitude of the California state officials. Shasta dam is simply breath-taking. And the potential riches of this entire area are staggering."

The governor was expected to leave for Washington as soon after adjournment of the state legislature as possible to discuss the matter with Federal officials. He said he had about decided to recommend to Federal authorities that they create a Central Valley Authority along the lines of the TVA to take over the Central Valley Project.

Mayor Seeks Citizens' Help

MAYOR Bowron of Los Angeles met with a representative group of citizens last month and appealed to them to help him fill the membership of the Water and Power Commission. In the last six months the city council has rejected three nominees submitted by the mayor, deeming them unsatisfactory.

Bowron explained he had been stymied by the council and the commission was hampered in its work because there were only three members. One of them, W. R. Fawcett, has had to spend much of his time in the East on private business. Fawcett's renomination has been twice rejected by the council but he was still serving because of lack of a successor.

The thirty-two citizens who met with the mayor were described as a cross section of the citizenry, all interested in the welfare of the $400,000,000 municipal enterprise.

The group was to submit a list of names to the mayor which he would examine and then strike from it the names of those he would not consider for appointment. The remainder of the names he will send to the persons who attended the meeting and ask them to submit, in writing, their opinions. The mayor, after choosing three names, will call another meeting for general discussion of his choices.

The city council on December 4th adopted the formal resolutions approving charter amendments Nos. 1-A and 2-A which were adopted by vote of the people at the November 5th election. The amendments permit the Water and Power Commission to revise the contracts covering Boulder dam power.

The resolutions were to be sent to the state legislature for ratification.

Gas Rates Reduced

CUSTOMERS of the Southern California Gas Company will receive reductions in their bills totaling $500,000 annually, Commissioner Carl C. Baker of the state railroad commission announced on December 18th.

The reduction was made following completion of the commission's annual investigation of this utility. The new rates will become effective with bills dated February 1, 1941, and thereafter. Commissioner Baker said reductions in rates are largely apportioned upon the amount of use made by customers. As a consequence, most of the reduction will be applied to the bills of those customers living in Los Angeles, as there was a greater ratio of growth in that area. The territory served by the utility experienced an unusually warm winter last year; therefore, its revenues were substantially lower. This was particularly true in the districts outside of Los Angeles and reduced the return made upon facilities in those areas, it was said.

Connecticut

State Commission Report

ELECTRIC service will be available to all potential rural customers in Connecticut within the next four years if the current construction speed is maintained, the state public utilities commission advised Governor Baldwin last month.

The commission, in its twenty-ninth annual report, pointed out that in the twelve months preceding May 1st, rural electrification in the state covered 228 additional miles, bringing to 851 miles the lines constructed in the past three years.

Construction of a total of 1,553 miles of rural extensions is required, according to the report, to serve all potential customers.

During the year 1939 people of Connecticut paid $25,232,565 to public utility companies for electric and gas services in their residences. This on the basis of 1,700,000 population, estimated, gives a per capita expenditure of $14.84. Electric and gas sales for commercial uses amounted to $11,422,411 and sales for industrial uses amounted to $12,128,515. On the basis of total gas and electric revenues in the aggregate of $56,679,893, which includes separate classifications for sales to municipalities,

other companies, etc., as shown in the annual report, the per capita revenues averaged $33.34.

The best percentage gains in the revenues of the utility companies came in the industrial classification, that is, manufacturing plants, and reflected principally the increase in industrial activity.

Total operating revenues, gas and electric combined, amounted to $56,679,893, an increase of 6.2 per cent over the previous year.

There are 29 public utility companies in Connecticut; 15 electric, 7 gas, and 7 gas and electric companies. Fixed capital assets of the electric companies as of December 31, 1939, were $164,818,325, an increase of $751,733; and mixed companies (gas and electric) $4,827,901, an increase of $51,715.

Louisiana

To Sell Gas to Army Camps

THE city of Alexandria, through its commission council, recently entered into an agreement with the Southern Gas Line, Inc., to furnish the city with natural gas to be sold by the city to the United States government for use at Camp Beauregard, Camp Livingston, the artillery range, and any other extension that the government may make in the vicinity of the three camps.

A resolution ratifying and approving the agreement was adopted by the council. At the same time the council adopted a resolution ratifying and approving the action of Commissioner Ben F. Bradford of the department of finance and utilities in executing contracts with the United States government to furnish natural gas to the government for use at Camp Livingston, old Camp Beauregard, and Camp Beauregard Airport, Cantonment Area 6, Alexandria.

The contract provides that natural gas shall be furnished to the government for use at these camps for the price of 16½ cents per thousand cubic feet. According to Commissioner Bradford, the government will bear all the cost of furnishing the material and laying the mains to connect with the main line of the Southern Gas Line, Inc.

Maryland

REA Pledges Support

HARRY SLATTERY, REA Administrator, last month pledged support of REA to Maryland farmers in Frederick and Carroll counties, whose efforts to serve themselves with electricity are being obstructed, he said, by Potomac Edison Company of Maryland "spite lines."

Mr. Slattery acted in response to appeals from the farmers seeking service and from the Adams Electric Coöperative, Inc., of Gettysburg, Pennsylvania, which has projected extensions to serve them. The coöperative asked for a loan of $150,000 from REA to finance the extensions.

Residents of the two Maryland counties sought service from the coöperative, just across the Pennsylvania state line, when they had failed in their efforts to get electric service otherwise, according to reports from the coöperative and from REA officials who have been on the ground. It is estimated that there are approximately 2,300 unserved farms in the two counties.

Harry Lamberton, assistant general counsel of the Rural Electrification Administration, told the state public service commission bluntly on December 12th that it was permitting power companies to stall the REA's entire program in Maryland. Lamberton's statement was made at the close of an informal conference held by the commission for Frederick and Carroll county farmers seeking establishment of the coöperative electric service.

Steuart Purcell, commissioner, said he would order an audit of the Potomac Edison's books to determine whether line extensions were being made into territory from which no applications for service had been filed. At the same time, the commission refused to issue a temporary stop order, as asked by the farmers, contending evidence for such an order was insufficient.

Officials of the Choptank Coöperative, Inc., whose headquarters are in Denton, which is sponsoring the construction of 160 miles of electric light wires in Kent county as a part of the Federal REA program, and officials of the Chestertown Electric Light Company were also reported last month to be engaged in a controversy over the right to erect lines in the unserved portion of the territory in the vicinity of Fairlee, Rock Hall, and Tolchester.

It was said that the Chestertown Electric Light Company objects to the erection of the REA lines in the Chestertown section of the county on the ground that the interests of prospective patrons can be served best by the Chestertown Company, which has extended its lines along a portion of the disputed territory. The state public service commission took the matter under consideration.

Michigan

Court Curbs Law

THE city of Lansing's contention that the 1939 state legislature erred in giving immediate effect to a law imposing the state sales tax on sales of municipal power was upheld on December 10th by the state supreme court.

The city had contested payment of $10,444 in taxes from June 22, 1939, the date when the immediate effect provision became operative, to September 29th, when the law normally would have been effective.

The court condemned the attachment of immediate effect clauses to routine legislation.

Mississippi

Transit Service to Aid Soldiers Extended

THE state public service commission recently granted the Tri-State Transit Company's application to give passenger service to Gulf coast points west of Gulfport and also allowed an extension of the Gulf Transport Company's routes from West Point to Corinth.

Awarding of a certificate of convenience and necessity to the Tri-State Company enables the company to transport soldiers training at Camp Shelby to Biloxi without transferring them to Greyhound or Gulfport and Biloxi municipal lines.

Approval of the new route for the Gulf Transport Company extends the company's line from Meridian to Corinth, paralleling routes of the motor line's parent railway company, the Gulf, Mobile & Ohio.

The transport company also was granted permits for passenger service between Columbus and Artesia and Starkville and Muldoon, both of which furnish additional connections with train service between Mobile and St. Louis.

Nebraska

Bids on Gas System

THE city of Hastings recently renewed negotiations for the purchase of the natural gas distribution system there of the Central Power Company.

Councilmen authorized Guy C. Myers, New York financier, to proceed with negotiations for the system for $225,000, the purchase to be subject to approval of the financial arrangements. Central Power's franchise in Hastings expired last October.

The city previously offered to pay $100,000 for the system, but the offer was rejected.

The proposed purchase would be made on a contract basis, according to Mayor L. T. Waterman of Hastings, and there would be no necessity for a bond issue. City officials declared the principal reason for making an effort to purchase the plant was to obtain lower gas rates.

The Northwestern Public Service Company has applied to the Securities and Exchange Commission for authority to acquire the gas utility properties and assets of Central Power Company, located at Grand Island, Hastings, and Kearney. A hearing was ordered for December 27th.

Ohio

Gas Rate Case Dismissed

THE Federal Power Commission at its meeting on December 20th decided that there was insufficient evidence of record, at the time, to support the joint motion filed by the cities of Cleveland and Akron for an immediate order reducing rates for natural gas sold at wholesale by the Hope Natural Gas Company to the East Ohio Gas Company.

The cities had filed with the commission on September 23, 1940, their joint motion for an immediate order reducing such rates in the amount of approximately $662,000 per year. In rendering its decision, the FPC took into consideration the representations made by the cities, the exceptions filed by the Hope Company, the state of West Virginia, and the West Virginia Public Service Commission, and the oral arguments presented by all parties concerned before the commission on November 20th.

Oklahoma

Court Sets Arguments

ORAL arguments on Governor Phillips' appeal in the Grand River dam case will be heard by the United States Supreme Court during the term which opens January 6th. Mac Q. Williamson, attorney general, said recently he had been notified by the clerk of the court that arguments would be heard some time during the term.

The 3-judge Federal court at Vinita last spring restrained Governor Phillips from interfering with closing of the Grand River dam after he called out the national guard. Phillips contended the state should be paid for loss of highways, the claim amounting to about $800,000 for replacement and elevation of bridges. He sought to stop closing of the final arch of the dam until the state was paid.

Court Frees Dam Cash

THE state supreme court recently upheld the validity of an election in which voters of Oklahoma City, by a close margin, approved a bond issue for improvement of the city's waterworks. The suit, brought by a dissatisfied taxpayer, raised some interesting points concerning the eligibility of voters in an election which is restricted by law (in this case the state Constitution) to "qualified property tax-paying voters."

Among the points raised were questions of property held jointly by man and wife and of taxpayers in fact who were unable to show tax receipts. The court held generally that election officials may rely upon affidavits to establish the eligibility of voters under such circumstances.

Oregon

Governor Hits PUD Costs

A WARNING and a protest against unjustifiable costs in financing public utility districts was issued last month by Governor Charles A. Sprague in offering the services of the state bond commission to the Northern Wasco People's Utility District.

Assistance of the commission was tendered, the governor said in his letter to the Wasco PUD, "because we received a report the other day that an eastern bond company proposed a plan of financing through short-term notes and had offered to prepare proceedings for you without charge."

The governor pointed out that bond dealers making such offers likely would expect remuneration in the form of higher interest rates. Services of the bond commission, of which Governor Sprague is chairman, would be without cost to the PUD's, the governor said.

In a letter of Bonneville Administrator Paul J. Raver, the governor protested "reports that have come to me indicate that the financing in certain of the public utility districts in Washington has been accomplished at very heavy expense, which I think is not at all justifiable."

Assist in Purchase Negotiations

THE Bonneville Power Administration last month accepted an invitation by the People's Utility District of Tillamook county to assist the district in negotiating for the purchase of the Tillamook county properties of the Mountain States Power Company.

Paul J. Raver, Bonneville Power Administrator, consented to participate in the negotiations after conferring with Fred Robitsch and Peter Suter, district directors, and J. L. Steinbach, district secretary. In a subsequent conference with Z. E. Merrill, president of the Mountain States Company, the Administrator made arrangements to begin negotiations with the company in the immediate future.

The Tillamook People's Utility District, created in July, 1933, was authorized last November 5th to issue up to $750,000 in revenue bonds to use in acquiring a system over which to distribute Bonneville power. The district has already contracted with the Bonneville Power Administration for 2,000 kilowatts of Columbia river power, deliveries to begin upon acquisition of a system by the district.

PUD Veto Demanded

COMPLAINANTS charged the November 5th election was illegal and asked dissolution of the Columbia River People's Utility District recently. The complaint asserted that the county court failed to designate polling places and that as a result five polling places outside the PUD voted on the proposal.

The district came into being with a majority of 92 votes. The complaint pointed out that the majority in favor in the five disputed districts was 109, enough to defeat the PUD if the election is declared illegal.

The five polling places were: Scappoose, Ranier precincts 1, 2, and 3, and Delena. The complaint was brought by Byron Monish, Ben Pasero, James A. Moore, Edward R. Wieneke, and Eugene Hegele.

Pennsylvania

Face Gas Price Increase

CITING substantial increases in operating costs, the Peoples Natural Gas Company, which serves 169 western Pennsylvania communities including parts of Pittsburgh and Allegheny county, has filed notice with the state public utility commission of a rate boost to industrial users.

The new rate schedule will be effective February 8th, and represents increases averaging approximately 6 per cent to consumers, covering all operations including steel and glass melting. Edward M. Borger, president of the utility, said:

"This company is experiencing substantial increases in operating cost, such as higher material prices, labor rates, taxes, and the cost of gas purchased. This results in a higher out-of-pocket cost of gas sold for industrial purposes, and necessitates some increase in the price of industrial gas. The actual percentage of the increase is not great."

If permitted by the commission, the new rates will prevail until June 1, 1941, unless otherwise withdrawn. The new rate structure table is as follows: $1.03 for the first 100 cubic feet or less; 7 cents per 100 cubic feet for next 600 cubic feet; 68 cents per thousand for the next 600 cubic feet; 63 cents per thousand for the next 4,000 cubic feet; 43 cents per thousand for the next 2,990 cubic feet; 40 cents per thousand for the next 3,500 cubic feet; 37 cents per thousand for the next 13,500 cubic feet; 34 cents per thousand for all over 20,000 cubic feet.

The usual discounts of 3 cents on the first 400 cubic feet or less, and 3 cents per thousand cubic feet on all over one thousand cubic feet will continue.

Rate Reduction Proposed

THE Pennsylvania Power & Light Company, serving 28 counties, offered the state public utility commission on December 18th a proposal for an annual reduction of $1,281,000 in its rates on electric light and power.

The commission said the offer followed informal conferences. It would take effect March 1, 1941.

The proposal has been accepted by all five commissioners, it was announced. The reduction, the commission said, applies to 411,406 customers. The firm serves a larger area in the state than any other utility.

There are 329,267 residential consumers affected by the reduction; 26,664 farms; 50,891 commercial customers; 233 small coal-mining industries; 320 textile plants; 1,615 additional industrial consumers; 2,416 government establishments.

Tennessee

Retains Appliance Policy

THE Nashville Power Board announced recently that it did not plan to expand the sale of small appliances or to enter into the field of heavier electrical appliances in 1941. Chairman W. C. Baird said that the board had made this decision because of the unusually good showing made by retail electric appliance dealers in sales promotion of heavier current-using appliances. He stated:

"A year ago the dealers in electrical appliances asked this board for a free hand in merchandising load-building equipment. I am glad to report that in the opinion of the management the dealers have lived up to their agreement, and as a result of their good work, the management does not contemplate altering any present arrangements."

The November report of the Nashville Electric Service revealed that power sales to residential consumers reached the highest monthly total in the history of the company, representing an increase of 19.4 per cent over November, 1939. Sales totaled 7,962,853 kilowatt hours for the month.

The report stated that the increase was "unquestionably due in part" to the intensive load-building activities in which NES has engaged in coöperation with the appliance dealers.

Virginia

Allowed New REA Loans

THREE Virginia electric coöperatives have been authorized by the state corporation commission to borrow a total of $253,000 from the Rural Electrification Administration for the extension of lines and improvements.

The Shenandoah Valley Electric Coöperative was authorized to borrow an additional $60,000; the Southside Electric Coöperative may borrow $93,000; and the Mecklenburg Electric Coöperative is authorized to issue notes for $100,000 to be used for the construction of 98 miles of line.

Washington

U. S. Control Over PUD's Urged

A RECOMMENDATION that the Federal Power Commission and Securities and Exchange Commission extend their jurisdiction to publicly owned electric companies was made at the Federal Power Commission's hearing in Seattle last month by officials of the Washington State Taxpayers' Association.

FPC representatives have been in the Pacific Northwest for about two months conducting a formal investigation of reported political activities of five Oregon and Washington private electric companies. SEC representatives have been interested spectators at all sessions.

Officials of the Taxpayers' Association, who testified as to disbursements of funds paid to it by the private electric companies, made the following statement upon completing their testimony:

"We assume that one of the purposes of the Federal Power Act is to provide for a wider use of electric current and to protect the consumers from unjust rates. The Federal Power Act has jurisdiction over certain phases of the operations of private companies and the SEC over their security issues.

"We believe that it would be in the interest of the consuming public if this jurisdiction were extended to the publicly owned units like the public utility districts. At the present time neither the state nor the Federal government has any jurisdiction or control of these bodies. Not even the people to be affected have the power of approval or disapproval."

The statement said that the present system of no supervision is "a fraud on the public."

". . . Someone skilled in the power business should be in a position to supervise the activities of the public utility districts, and to keep them from unwise action and improvident purchases. We believe that this should be made the duty of the Federal Power Commission. We request you to incorporate such a recommendation.

"We believe that the determination of what is a fair price, *i. e.*, how much the public utility district shall pay for the actual equipment that it needs and how much can be safely assumed by the district, having due regard for population and their means of paying, should be the responsibility of the SEC."

Wisconsin

Gas Firm Abandons Project

PLANS to bring natural gas into Wisconsin will be abandoned "temporarily" by the Natural Gas Pipeline Company of America, one of three firms attempting such a project, George P. Garver, vice president and manager of the Wisconsin division, said recently.

According to Garver, the highway commission refused permits to extend the pipe line across state highways. He added that this was "primarily" the reason for halting the project.

It was announced on December 4th that the highway commission had given the company permission to return to Illinois sections of pipe unloaded near Genoa City, Wisconsin, to continue the extension.

The Natural Gas Pipeline Company contended that it needed no permit to enter the state and had built its line up to the Wisconsin-Illinois border without seeking permission from either state or Federal commissions. However, the Independent and Western Natural Gas Company have applied to the Federal Power Commission for permits to extend their lines into the state.

Wyoming

Reduced Rate Schedule Filed

THE Cheyenne Light, Fuel & Power Company filed a new schedule of residential and commercial power rates with the state public service commission on December 6th granting a reduction of $52,000 annually to its consumers. The new rates will be effective on all meter readings made after December 20th, and the savings will be shown on bills mailed out in January, PSC Secretary Hancock said.

Hancock said the filing of the new schedule by the company climaxed several months of negotiations and was the second reduction to be made in eighteen months by the company.

The first cut was made in April, 1939, and was estimated at $125,000, but according to commission figures actually resulted in a saving of $148,190 for the consumers. With the new rates the consumers will have received the benefit of a saving amounting to nearly $200,000 in the last year and a half.

The Latest Utility Rulings



The Supreme Court Upholds FPC "Tributary" Jurisdiction

THE United States Supreme Court in a 6-to-2 decision (Chief Justice Hughes not participating) upheld the jurisdiction of the Federal Power Commission over hydroelectric plants situated on streams which are not themselves navigable. The court's decision, written by Justice Reed, may lend new vitality to the theory, strongly held in administration quarters, that the Federal government has a dominating jurisdiction not only over activities which themselves constitute interstate commerce, but those which might be said to be indirectly interstate commerce or "affecting interstate commerce."

The court's decision on December 16th reversed the decision of two lower Federal courts in upholding the right of the FPC to require the Appalachian Electric Power Company to apply for a major license as a prerequisite to constructing a hydroelectric dam on the New river near Radford, Virginia. The company had resisted upon the grounds that the New river was not navigable and that the state of Virginia rather than the Federal government had regulatory control over such structures. The FPC contended, however, that the constitutional power of the Federal government to regulate structures affecting interstate commerce extended not only to streams which are presently navigable but to streams which might affect navigability, and to any hydroelectric structure which might in any way "affect interstate commerce."

The commission's position was sustained by the majority opinion. Justice Reed's opinion dwelt upon previous experience and attempts at navigation improvements on the New river and concluded that inasmuch as the river could be made practically navigable by artificial improvements at reasonable cost, it was within the realm of Congress to direct Federal supervision over such streams, not only to the extent of regulating navigation features, but within the full scope of interstate commerce, including the regulation of incidental activities such as flood control and by-products such as water power. Justices McReynolds and Roberts dissented. *Appalachian Electric Power Co. v. Federal Power Commission. December 16, 1940.*

Sinking-fund and Call Premium Provisions on Issuance of Bonds Approved

FIRST mortgage bonds of the Boston Edison Company for the purpose of retiring outstanding bonds, with a consequent saving to the company, were approved by the Massachusetts Department of Public Utilities. The proposed plan included a sinking-fund provision and a provision for call premiums.

The sinking-fund provision was said to be in the nature of a protective device for the security of the investor. Annual payments required would not be chargeable to operating expenses. Their effect would be progressively to diminish interest charges and, subject to necessary and proper safeguards, would prevent the inclusion of this fund in any basis of estimating future rates. Commissioner Grant, speaking for the department, said:

> Those who purchase long-term utility obligations, particularly during periods of economic instability, require assurance that their security will not be impaired by improper management practices or by overzealous regulation. . . .
>
> The present financial condition of many American railroads is also somewhat in point. In some cases, notably that of the New York, New Haven & Hartford Railroad Company, recently before this department as a petitioner for service reductions, these railroads, freed of the encumbrance of top-heavy accumulated debt, would be able to operate maximum schedules and to do it profitably. There is at least opportunity for discussion of what might have been the case had it been feasible or permissible to have retired these issues over the years by the sinking-fund method.

Sale of the bond issue at a premium was considered likely, and, since the bonds would embody an optional redemption clause, it was considered necessary, for the protection of those holders who purchase their bonds at the advanced price represented by the amount of premium, to make provision for payment of a call premium in the acquisition of bonds redeemed before maturity. On this point it was said:

> Objectively considered, we think this provision for call premium will result beneficially to the company as it gives assurance of the best possible price at the time of sale. Conversely, there is a distinct benefit to the purchaser by the secured advantage of a net rate of yield which will be at least equal to the basis upon which he made the original purchase, irrespective of the date on which the bonds may be called. We further apprehend that there can be no public objection to a provision which secures to the company the lowest possible interest rate and leaves the matter of electing to call solely within the company's discretion.

Bonds which might be called for the sinking fund were to bear a lower call rate.

This did not appear to be illogical as the sinking fund is in purpose an additional protection for the investor, and no substantial penalty should be imposed upon the company by the necessity for paying the call price. *Re Boston Edison Co. (D.P.U. 6228).*

Restoration of Service Not Ordered by Court In Absence of Hearing by Commission

THE supreme court of South Carolina affirmed an order refusing to issue a writ compelling a railway company to restore passenger trains which had been discontinued without permission of the commission, and dismissed the complaint. The court recognized the duty of a railroad to serve the public fairly and impartially, but stated that where the public does not use the facilities furnished to a sufficient extent to compensate the company, it is a matter for the commission to determine after a hearing whether or not more than the minimum of service should be supplied.

The court did not believe that a writ should be granted requiring restoration when there had been no judicial determination by the commission that the railway had no right to dicontinue the service and when no statute had been violated.

A commission rule requiring railways to publish and to give the commission notice of any change in passenger service was not construed as requiring the company to get commission permission.

Where the statute gave the commission power to regulate the service of every public utility and to fix standards, regulations, and practices, this was held to refer to those companies which are classified as "public utilities" in contradistinction to transporting and transmitting corporations. A commission rule requiring that no service of any public utility subject to commission regulation should be deemed approved by the commission until affirmatively approved was held not to refer to railways. It was ruled that the commission before specifying any particular type of railway service must have a hearing on the merits of the case. *Darby et al. v. Southern Railway Co. 10 SE(2d) 465.*

State Can Collect Percentage of Refunds For Excess Charges

THE supreme court of Oklahoma has upheld the action of the commission in denying an application by several telephone subscribers for an order directing a refund by the commission of all moneys remaining in its hands coming to it from the Southwestern Bell Telephone Company as a result of excess charges bonded by the company pending an appeal from a rate order. The commission had disbursed 90 per cent of the fund to subscribers but retained 10 per cent for conversion into the state treasury under the provisions of a statute.

Objections that the statute was unconstitutional because of the alleged insufficiency of the title were overruled. The court said that a statute is not to be declared unconstitutional on the ground that the subject thereof is not expressed in its title, unless the title is clearly insufficient. Moreover, the title may be general and need not contain an abstract of the contents of the bill or specify every clause in it. The act in question, as indicated by the title, related solely to fees to be charged by the commission or its secretary.

The power and authority of the legislature to require that 10 per cent of the refunds be paid into the state treasury as a fee were said to be well settled. The court cited Charlotte, C. & A. R. Co. *v.* Gibbes, 142 US 386, 12 S Ct 255, 258, 35 L ed 1051. It was said further:

> The legislature has for many years appropriated large sums of money to defray the expenses of the corporation commission in investigating and adjusting rates charged by the public utility companies within the state. The companies are required by law to pay all expenses incurred by the corporation commission in checking refunds, determining to whom they belong, and delivering same to the parties entitled thereto. As to other expenses incurred in making investigation, conducting hearings, appeals, etc., in proceedings involving rates charged by utility companies, the law as enacted by the legislature requires the parties benefited, where appeals are prosecuted and rates are suspended pending appeal, to bear a part of the expenses incurred by the state.

Crawford et al. v. Corporation Commission et al. 106 P(2d)806.

Regulated Competitive System of Transportation Desirable

THE Pennsylvania commission, in authorizing additional motor carrier service between the Philadelphia district and the Pittsburgh district, concluded that a regulated competitive system under supervision of the commission is desirable. The extent to which there shall be competition, said the commission, is a matter for its administrative judgment and discretion. Its primary concern is best to serve the interests of the public.

Unrestricted competition, the commission continued, must be avoided, for such course would result in such diversion of traffic from the present carriers as to impair their functions so as eventually to cause loss not only to the carriers affected, but also to the public generally. As stated in the commission's opinion:

> The record in the instant case indicates there is a substantial demand for service by shippers which cannot be adequately handled by rail, due to its inflexible nature. The areas here under consideration are the largest industrial centers in Pennsylvania and the tonnage between these areas is of a considerable volume. Such motor carrier facilities must be provided as will insure a free and uninterrupted flow of traffic at rates compensatory to the carriers and yet as favorable to the shipping public as possible. The recently opened Pennsylvania turnpike provides a high-speed road between the areas under consideration, ideally suited for truck transportation with its low grades and minimum curves.

Re Philadelphia-Pittsburgh Carriers, Inc. (Application Docket No. 59310, Folders 1, 2).

Nonpayment of Bill Justifies Service Denial without Judicial Action

THE right of an electric company to cut off service to a customer who refuses to pay his bills, without a judicial determination as to the correctness of his contention that he is being overcharged, has been upheld by the court of civil appeals of Texas. The evidence showed that a customer had flatly refused to comply with the terms of his written contract with the company, although it specifically provided the method of obtaining another rate should the one in effect become unsatisfactory. The customer owed more than his deposit.

The customer had contended that he was overcharged. Since he believed that he had reasonable grounds for making such contention, he argued that upon that situation alone he was entitled to a damage verdict for cutting off service.

The court distinguished this situation from Southwestern Gas & E. Co. *v.* Stanley (1934) 123 Tex 157, 70 SW (2d) 413, where a customer won out upon a showing that he had two meters, one at his home and one at his shop, under separate contracts. In that case the customer became delinquent on his bill at the shop and the company discontinued service at both his residence and shop when the bill at the residence was fully paid and was not in default. *Bantuelle v. Southwestern Gas & Electric Co. 143 SW (2d) 994.*

Service May Be Denied When Meter Is Inaccessible

A DAMAGE claim for discontinuance of electric service was disallowed by a California court, where, after a prolonged controversy between the customer and the company over the inability of meter readers to gain access to the meter, service had been discontinued. Denial of service was found to be in accordance with rules and regulations approved by the commission. The court said:

> The reasonableness of such rules and regulations, as correctly pointed out by respondent, is a question addressed to the judgment of the governmental agency charged with the determination thereof—in this instance, the railroad commission of the state of California. That commission having acted with regard thereto, either directly or by implication, as the evidence shows without contradiction, the rules became and were binding on defendant company. The reasonableness of such rules and regulations, in the circumstances, was conclusive on the trial court.

In the early days of the controversy the company had submitted meter readings during a time when the customer said he was absent and the meter reader could not read the meter. One of the readers, however, said that he could read the meter on the back porch through a screen door. Later the company admitted that readings could not be made, but the customer seemed to take the position that the company had said that the meter could be read through the screen and they should read it that way. *Carpenter et al. v. Los Angeles Gas & Electric Corp. 106 P(2d) 916.*

Right to Sue for Damage Claims for Unlawful Discrimination

THE New York Court of Appeals sustained a judgment for damages suffered by a consignee because of discrimination by a railroad company in issuing permits for delivery of cars after the placing of an embargo on shipments

of grapes except those covered by permits.

The complaining consignee was held to have a right to maintain an action in the state court without first presenting his grievances to the Interstate Commerce Commission.

At common law, said the court, railroad carriers are under a duty to serve all persons without unjust or unreasonable advantage to any. A carrier, under the Interstate Commerce Act, is liable for the full amount of damages caused to any person by any act of the carrier prohibited by the act. The act does not relieve carriers from common-law duties or deprive shippers and consignees of common-law rights except where it so provides expressly or by necessary implication.

In some cases aggrieved parties have been required to resort to the commission, but, said the court:

> The principle of these cases has no application, however, where the asserted grievance is not that a rule of practice is unreasonable or discriminatory but that the rule of practice is unequally applied.

The consignee did not complain that a limitation by the railroad in its rules was unreasonable or invalid. His asserted grievance was that the carrier discriminated unfairly, either by granting permits for shipments to competitors in preference to earlier shipments to him or by disregarding the embargo and handling cars consigned to his competitors though no permit had been granted. *Hewitt v. New York, New Haven & Hartford Railroad Co. 29 NE(2d) 641.*

Service Cannot Be Required at a Continuing Loss

THE New Hampshire commission authorized the operator of a telephone system to discontinue service where he was operating at a continuing financial loss. The commission at the same time authorized another applicant to operate a telephone utility in the territory.

Complaints against the adequacy of the former service had been made to the commission, but apparently the operator of the system was unable to make expenditures for improvements. The commission said:

> It was evident that the owner of the utility was not financially able to rehabilitate the system. If after hearing he should fail to comply with an order involving expenditures which he could not meet, the commission could merely revoke his franchise, resulting in complete discontinuance of service.

Suggestions were made by residents for the formation of a coöperative, but no one was interested in carrying out such a plan. The commission said that it could not force an individual or group to undertake a utility operation, nor could it compel a utility operator to continue service if he elects to quit, especially in view of a continuing financial loss.

The applicant for authority to serve in the territory appeared to the commission to be capable of continuing the present service, and it was said that with the patient coöperation of his customers, present and prospective, he might be able over a period of years to rehabilitate the system. *Citizens of Washington v. Washington & Cherry Valley Telephone Co. (D-E1984, 2039, 2044, Order No. 3821).*

Municipality Permitted to Operate Bus Line Running to Another City

A CALIFORNIA court ordered a city treasurer to sign and execute municipal bonds authorized by the voters for the purpose of raising funds to acquire and operate a municipal transportation system or bus line between Mill Valley and San Francisco and intermediate points. The municipal official had ob-

jected that the city should not be permitted to expend funds of the taxpayers for a service which in part would be for the benefit of nonresidents and nontaxpayers. The court did not disagree with the general rule that a city may not furnish public utility service beyond its corporate limits "in the absence of statutory authority," but it held that the California Constitution and statutes were enacted expressly to confer such power.

In response to an argument that taxpayers of the city would be required to support the system not only for its own inhabitants but also for those of the traveling public outside its boundaries, the court said:

> Here we have a case where public service is exchanged for a compensation and it will not be assumed that the city will misuse the power by giving the transportation free. On the contrary, it will be presumed that the city will exercise the power fairly and in accordance with the purposes of the statutes. That nontaxpayers living outside the boundaries of the city may thus obtain an advantage at the risk of the taxpayers within the city is no more serious obstacle to the validity of the scheme than that nontaxpayers living within the city limits may enjoy the same advantage. But if this feature of the general scheme is objectionable on the ground stated, it goes to the entire plan of public utility service both within and without the municipal boundaries. If the plan is economically unsound for this reason, the objections raised are administrative and legislative, rather than judicial.

Mill Valley v. Saxton, 106 P(2d) 455.

Adverse Findings Will Not Be Reviewed Where Immaterial

A PUBLIC utility company appealed from findings and determinations of the Pennsylvania commission contained in orders upholding the reasonableness of sewerage rates. Exceptions to the commission's order had been dismissed "except in so far as they relate to the method of rate base determination." The commission did make certain definite findings with respect to various elements of value and allowable revenues but failed to make any specific finding of fair value. The court affirmed the order and refused to pass upon the findings.

The purpose of the company in appealing was to avoid a recurrence in the immediate future of an expensive and time-consuming rate proceeding, and also to avoid being charged in the future with acquiescence in the findings of the commission with respect to the various elements of value and rate of return. The court reiterated its opinion expressed in Beaver Valley Water Co. *v.* Public Utility Commission (1940) 35 PUR(NS) 119, 14 A(2d) 205, that commission orders fixing rates are not *res adjudicata*. Furthermore, the findings complained of were not necessary or essential to sustain the order as finally entered.

The failure of the commission to make a specific finding of fair value did not constitute reversible error. It was said to be true that where rates are imposed upon a utility by the commission against the will of the utility, the commission must find fair value so that the question of confiscation, if raised, may be properly determined upon appeal. The issue of confiscation, however, could not properly be raised in the present case as the only effect of the order was to sustain rates filed by the company. Apart from this, while the law authorizes the commission to find fair value, it does not specifically require such finding except where the commission finds new rates to be unjust or unreasonable or in violation of law, or where the commission prescribes temporary rates. *Perkasie Sewer Co. v. Public Utility Commission, 16 A(2d) 158.*

NOTE.—The cases above referred to, where decided by courts or regulatory commissions, will be published in full or abstracted in *Public Utilities Reports.*

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COMPRISING THE DECISIONS, ORDERS, AND RECOMMENDATIONS OF COURTS AND COMMISSIONS

VOLUME 36 PUR(NS) NUMBER 1

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PUBLIC UTILITIES REPORTS

MINNESOTA RAILROAD AND WAREHOUSE COMMISSION

Re Northwestern Bell Telephone Company (Minneapolis Metropolitan Area)

[M-2502.]

Valuation, § 1 — Propriety of determination — Abnormal period of high prices.

1. It is not in the public interest to determine a valuation of utility property in an abnormal period of high prices, p. 2.

Rates, § 1 — Termination of investigation — War conditions.

2. An investigation on the Commission's motion to inquire into the reasonableness of telephone rates should be terminated upon conditions relating to an immediate reduction when it is apparent that operating conditions are, and for some time in the future will be, uncertain because of the repercussions of foreign wars, and where a contemplated expansion program, to be completed before termination of the investigation and hearing, would have to be considered in ascertaining the rate base, p. 2.

[October 15, 1940.]

INVESTIGATION *brought on Commission's motion to inquire into reasonableness of telephone rates; new schedules ordered and investigation terminated.*

By the COMMISSION: This proceeding is an investigation brought on the Commission's motion for the purpose of inquiring into the reasonableness of the rates and charges of the Northwestern Bell Telephone Company in the Minneapolis metropolitan area. For reasons which will be stated, the Commission has determined that final decision and action should be suspended and that the public interest requires that the investigation

should be terminated upon the conditions prescribed herein.

The instant proceeding, File M–2502, follows and supplements an investigation begun November 1, 1937, as File M–2363, which was suspended by our order of May 22, 1939. Up to the present time our engineering and accounting forces have been making a field inventory, appraisal, and underlying studies. The Minneapolis area is contiguous and similar, in many respects, to the St. Paul area in which telephone rates have been the subject of inquiry and action by this Commission during the period of 1929 to June, 1940. Much of the information obtained in the latter area has been valuable in the Minneapolis studies. From the knowledge thus obtained, the Commission is sufficiently informed to take the present action.

[1, 2] It is apparent that operating conditions are now and for some time in the future will be uncertain, because of the repercussions of the wars in Europe, Africa, and Asia. If past experience be any guide, the defense programs of the government will affect still further market and price levels. Increased Federal and state taxes are already here and are reflected in the record before us. It is now generally understood that under comparable conditions preceding the last World War, it was practically impossible to fix rates for any definite period. What the present unsettled condition may become under the full impact of the defense program cannot be foretold.

In any formal hearing which might be held in the premises, the company undoubtedly would contend as it did in the St. Paul hearings, that such unsettled conditions and substantial increases in operating expenses occasioned by higher taxes, labor, and material costs preclude any reduction in rates; that on the contrary a raise in rates is indicated and must be obtained if operating expenses go higher.

But, aside from such claim of the company, the Commission believes the pending investigation should be terminated. It is not in the public interest to determine a valuation of utility property in an abnormal period of high prices. Since value must be determined as of the time of inquiry (Missouri ex rel. Southwestern Bell Teleph. Co. v. Public Service Commission, 262 US 276, 287, 67 L ed 981, PUR1923C 193, 43 S Ct 544, 31 ALR 807), the higher value fixed in such a period would become part of the rate base and thus continue indefinitely into the future as the base upon which the subscribers would be required to pay rates. Therefore, from the patrons' viewpoint, value should no more be ascertained upon the basis of an abnormal period of high prices (See: Annotation, 20 ALR 555) than, from the utility's viewpoint, upon "panic," low-price periods. (State ex rel. United Teleph. Co. v. Public Service Commission [1935] 336 Mo 860, 9 PUR(NS) 259, 81 SW(2d) 628). It has been held that utility rate base valuations should not be based upon sudden or abrupt rises or declines in prices. (West v. Chesapeake & P. Teleph. Co. (1935) 295 US 662, 673, 79 L ed 1640, 8 PUR(NS) 433, 55 S Ct 894).

In view of the factors mentioned, it became necessary to decide whether or not to proceed with the pending in-

vestigation, and, as previously stated, we have concluded to terminate it upon the condition specified. Thus, without tying the hands of the Commission to make further investigations at any time in the future, the lower rates now approved may be obtained without further delay and expense. Extensive and contested hearings will be eliminated as will also the making of final rates which, under present and approaching conditions cannot be expected to have any permanence. Moreover, it is doubtful whether any reductions would be forthcoming under the conditions which might prevail at the conclusion of the investigation. The expense and delay, not only of continuing the investigations and hearings, but also of possible litigation may thus be avoided by a reasonable attitude on everyone's part. The conditions herein imposed will promote and protect the public interest.

From available information, and expressly withholding any findings or determination thereof, it would appear that a conservative fair value of the company's property used and useful in the Minneapolis exchange service as of December 31, 1939, would be approximately $24,500,000. In the St. Paul investigation, the Commission found the fair value as of December 31, 1939, to be $14,800,000, which, on the basis of 86,015 stations in service as of that date would average $172.06 per station. The same average applied to the 154,226 stations in Minneapolis would produce a fair value of $26,536,126. But allowance for certain differences between the two areas would indicate that the fair value first mentioned for Minneapolis is reasonable and fair to the company.

While the general characteristics of the two plants are quite similar, St. Paul has slightly more outside plant per station than does Minneapolis, and the per cent relation of dial central office equipment and dial stations (both of which cost more than manual) to the total of such equipment is greater in Minneapolis than in St. Paul. In that city, gross additions to plant during the years 1933–1939 amounted to more than 50 per cent of the book costs as of December 31, 1939. In Minneapolis, most of the plant reconstruction work and conversion from manual to dial were made prior to 1934 at lower cost levels than applied to the later period. Plant facilities in Minneapolis as of December 31, 1939, were relatively more nearly filled with consequent less facilities available for future growth than was true in St. Paul as of the same date. We are advised that the company is planning an expansion program of approximately $2,000,000 during 1940 and 1941 to provide relief from this congested situation and to meet the very rapid station growth recently experienced and expected to continue for some time. It is expected that about $755,000 of this expenditure will be required to reduce the present congestion to a normal fill basis, and the balance will go toward future growth. Before the present investigation and resultant hearings could be completed and an order issued, a substantial part, if not all, of the $2,000,000 expansion program would be completed and would have to be considered in ascertaining the rate base.

It is apparent, therefore, that the reproduction cost new of the following classes of Minneapolis plant,

which comprises more than 50 per cent of the total plant investment, would be higher today and still higher within the next few years, than the actual cost when the property was incorporated into the plant.

	Book Cost Dec. 31, 1939
Central office equipment (Approximately $6,000,000 added 1926–1933)	$9,011,956
Buildings (Downtown building completed 1932-cost about $3,800,000)	4,677,585
Exchange pole line	993,183
Exchange underground conduit (On books at .34 a duct foot—would cost about .50 to reproduce)	1,935,789
Total	$16,618,513

The per cent condition of the Minneapolis plant is probably slightly lower than that in St. Paul, but since both are modern plants which have been subjected to rapid growth and additions, the difference for present purposes would be negligible. However, consideration is given in part to such discrepancy by applying $160, rather than $172.06 used in the St. Paul investigation, to the 154,226 Minneapolis stations, which produces a fair value of $24,676,160.

The cost of labor to the company has increased about 33 per cent due primarily to the reduction from a 6-day to a 5-day work week per employee and to increases in wage levels. There has been a substantial increase in some manufactured telephone materials, particularly in central office equipment, since the period of 1926–1933.

The state gross earnings tax has been raised from 4 per cent to 7 per cent or an increase of 75 per cent. The company has been subjected to the state income tax and to the moneys and credits tax. Recent Federal enactments have increased Federal income tax rates.

A tentative income statement has been prepared by the Commission staff, which, without now being determined, shows in Column II the actual revenues and expenses for 1939 compared with an adjustment, in Column III, reflecting the effect of our rate reduction order of May 2, 1939, and the present reductions under this order, spread throughout the entire year. Column IV indicates the difference between Columns II and III. [Table omitted.]

The foregoing table indicates that giving full effect to the rate reductions made in June, 1939, the elimination of hand-set charges in January, 1940, and increased state and Federal taxes, the Minneapolis exchange would have earned in 1939 5.88 per cent upon a fair value of $24,500,000.

Since 1932, the Commission has secured rate changes resulting in substantial savings to Minneapolis subscribers cumulating to approximately $2,500,000. In 1933, residence rates were reduced approximately $200,000 per year. In June, 1939, all main station charges were reduced an additional $600,000. Rates on hand sets have been repeatedly reduced and, on January 1, 1940, were removed entirely, resulting in a further annual reduction of expense to the users and revenue to the company in the sum of $58,743. The present order makes an additional reduction of $149,000.

In the course of the field inventory and other studies made within the area, certain labor unit costs were compiled and are now being completed. Since these are of permanent value to the state and relatively little additional

work and expense would complete them in permanent, usable form as part of the other permanent records obtained in the investigation, the present order will provide for the completion of the labor unit costs by continuing the investigation for such purpose only for a period of not to exceed one month.

In the light of present conditions and upon available information, we are convinced that the existing exchange rates and charges in Minneapolis with the modifications herein approved are fair and reasonable. And we are convinced that the termination of this investigation upon the conditions here included is in the public interest and will amply protect it, for this order in no way precludes the Commission at any time in the future when it appears that further investigation of these rates is warranted, from taking appropriate action.

Editor's note.—Similar action was taken by the Commission in Re Northwestern Bell Teleph. Co. (Duluth Metropolitan Area) M–2470, Oct. 21, 1940.

SECURITIES AND EXCHANGE COMMISSION

Re Florida Public Service Company

[File No. 70–150.]

Re Georgia Power & Light Company

[File No. 70–151.]

[Release No. 2333.]

Intercorporate relations, § 18.1 — Security acquisition — Customers' instalment paper.

Acquisition of customers' instalment paper from dealers is properly exempted from the provisions of § 9(a)(1) of the Holding Company Act, 15 USCA § 79i (a) (1) on application by an operating public utility subsidiary pursuant to § 9(c)(3) of the act, upon a showing that the use of dealers for the sale of appliances is the customary and long-established practice of the applicant, in the absence of any indication that proposed acquisitions are unreasonable on the ground that the interest of the public, investors, or consumers will be adversely affected by the continued practice.

[October 17, 1940.]

APPLICATION *by operating subsidiary pursuant to § 9(c)(3) of the Holding Company Act seeking exemption from provisions of § 9(a)(1) for the acquisition from dealers of customers' instalment paper; application granted.*

APPEARANCE: Robert N. Hislop, of the Public Utilities Division of the Commission; no appearances for applicants.

By the COMMISSION: Florida Public Service Company (hereinafter referred to as "Florida"), an operating public utility subsidiary in the Associated Gas and Electric Company system[1] has filed an application pursuant to § 9 (c) (3) of the Public Utility Holding Company Act of 1935, 15 USCA § 79i (c) (3) seeking exemption from the provisions of § 9 (a) (1) of the act for the proposed acquisition by applicant from dealers of customers' instalment paper in an aggregate amount, not to exceed $175,000, the dealers being confined to the area served by applicant, and the customers being persons served with electric energy by applicant.

Georgia Power and Light Company (hereinafter referred to as "Georgia"), an associate of Florida and an operating public utility subsidiary in the Associated Gas and Electric Company system,[2] has filed a similar application for the proposed acquisition from dealers of customers' instalment paper in an aggregate amount not to exceed $50,000.

Because the applications are concerned with common questions of law and fact, the Commission ordered a consolidated public hearing which was duly held. After examining the record, the Commission makes the following findings:

Nature of Applicants

Florida, incorporated in the state of Florida, is engaged in the generation, distribution, and sale of electricity, gas, water, and ice, serving 149 communities and adjacent rural areas in the state of Florida. The population of the area served is estimated to be 115,000.

Georgia, incorporated in the state of Georgia, is engaged principally in the distribution and sale of electric energy. It furnishes retail electric service to fifty-seven communities and adjacent rural areas and wholesale electric service to six communities, all in the state of Georgia. In addition to electric service, water service is furnished to five communities and ice is furnished in six communities. The population of the area served is estimated to be 75,100.

Fees and Commissions

The applications reveal that no fees or commissions are to be paid in connection with the proposed acquisitions.

Legal Aspects

An opinion of applicants' counsel appears in the record which states that

[1] Florida Public Service Company is a wholly owned subsidiary of Southeastern Electric and Gas Company, which is in turn a wholly owned subsidiary of General Gas & Electric Company, which is in turn a wholly owned subsidiary of Associated Gas and Electric Corporation, which is in turn a wholly owned subsidiary of Associated Gas and Electric Company, which is in turn a wholly owned subsidiary of Trustees under Voting Trust Agreement dated March 1933. All of the above companies except Florida Public Service Company are registered holding companies. Associated Gas and Electric Corporation and Associated Gas and Electric Company have filed petitions under Chapter X of the Bankruptcy Act for voluntary reorganizations, which are now pending in the United States district court for the southern district of New York.

[2] Georgia Power and Light Company occupies the same relationship to the Associated Gas and Electric Company system as Florida.

in his opinion no approval of these acquisitions by the state Commission of either Florida or Georgia is necessary. This opinion further states that all necessary legal and corporate action has been taken by the applicants to make valid the proposed acquisitions.

Section 9 (a) of the act provides that unless the acquisition has been approved by the Commission under § 10, it shall be unlawful "for . . . any subsidiary company . . ., by use of the mails or any means or instrumentality of interstate commerce, or otherwise, to acquire, directly or indirectly, any securities . . ." However, § 9 (c) (3) provides, among other things, that subsection (a) shall not apply to the acquisition by a subsidiary of a registered holding company of "such commercial paper and other securities, within such limitations, as the Commission may by rules and regulations or order prescribe as appropriate in the ordinary course of business of a registered holding company or subsidiary company thereof and as not detrimental to the public interest or the interest of investors or consumers."

Acting pursuant to the rule-making authority embodied in § 9 (c) (3) we have promulgated Rule U–9C–3 (2) which provides among other things that a subsidiary company may acquire "any obligation evidencing indebtedness of a customer for goods purchased from, or services rendered by, the acquiring company."

In the instant cases the appliances, for which the customer paper is payment, are to be purchased from dealers and not directly from applicants, therefore, the above-cited rule does not apply. The record in these proceedings, revealing that the use of dealers for the sale of appliances is the customary and long-established practice of the present applicants, indicates no basis for our finding that the proposed acquisitions are unreasonable on the ground that the interest of the public, investors, or consumers will be adversely affected by this continued practice. We accordingly grant the requested exemption.

An appropriate order will issue.

By the Commission, Commissioner Eicher being absent and not participating herein.

ORDER

Florida Public Service Company, an operating public utility subsidiary in the Associated Gas and Electric Company system, having filed an application pursuant to § 9 (c) (3) of the Public Utility Holding Company Act of 1935 seeking an exemption from the provisions of § 9 (a) (1) of said act for the acquisition from dealers of customers' instalment paper in an aggregate principal amount not to exceed $175,000;

Georgia Power and Light Company, an associate company of Florida Public Service Company and accordingly an operating public utility subsidiary in the Associated Gas and Electric Company system, having filed an application pursuant to § 9 (c) (3) of the act seeking an exemption from the provisions of § 9 (a) (1) of said act for the acquisition from dealers of customers' instalment paper in an aggregate principal amount not to exceed $50,000;

A consolidated hearing on said ap-

plications having been duly held after appropriate notice; the record having been examined; and the Commission having made and filed its findings herein;

It is *ordered* that the exemptions from the provisions of § 9 (a) (1) of the Public Utility Holding Company Act of 1935 sought by said applications as amended, be, and the same hereby are granted, subject, however, to the following conditions:

1. That the acquisition for which exemptions are hereby granted shall be made in compliance with the terms and conditions of, and for the purposes represented by, said applications as amended;

2. That the Commission reserve jurisdiction, after notice and opportunity for hearing, to revoke or modify this order if it appears that further acquisitions pursuant thereto would be inconsistent with any provisions of the Public Utility Holding Company Act of 1935, or any rule or regulation thereunder, or any terms or conditions of this order, or if it shall appear that further exercise of the exemptions hereby granted will be detrimental to the public interest or the interest of investors or consumers. Pending final determination respecting the revocation or modification of this order, the Commission may summarily suspend the exemptions hereby granted.

NEW YORK SUPREME COURT, SPECIAL TERM, ALBANY COUNTY

People ex rel. Public Service Commission

v.

New York Telephone Company et al.

(— Misc —, 22 NY Supp(2d) 837.)

Telephones, § 7 — Powers of Commission — Sale of service by hotel.

1. Whether public telephone service shall be sold at all by a hotel is a question well within the regulatory power of the Commission to determine, p. 10.

Telephones, § 7 — Power of Commission — Conditions.

2. The power of the Commission to prohibit the sale of public telephone service by a hotel implies the power to condition a permission, p. 10.

Public utilities, § 117 — What constitutes public utility service — Hotel telephone service.

3. Public utility service furnished by a telephone company remains a public utility service when sold by hotels, p. 10.

Rates, § 568 — Telephones — Hotel service — Surcharge.

4. A surcharge by a hotel for telephone service is an integral part of the rate for that service, and it should be commensurate with the utility service rendered, p. 10.

Rates, § 103 — Jurisdiction of Commission — Hotel telephone service.

5. The Commission has jurisdiction to determine what surcharge shall be made by a hotel which sells public utility service furnished by a telephone company, p. 10.

Service, § 171 — Resale of telephone service — Hotels as agents.

6. The agency of hotels in rendering telephone service to their guests, pursuant to a tariff of a telephone company, is sharply delimited in scope by the tariff that creates it, and it imposes no broader undertaking upon the hotels than to see to it that the tariff is carried out, p. 11.

Return, § 50 — Confiscation — Absence of compulsion to serve.

7. Confiscation is usually to be asserted only when service must be given at a required rate, p. 11.

Return, § 50 — Confiscation — Hotel telephone service — Service not compelled.

8. A telephone rate tariff, ordered by the Commission, fixing rates that hotels may charge their guests for public telephone service and allowing surcharges to be made by the hotels above the common rates for public telephone service, is not confiscatory as to the hotels since the rates carry no compulsion to give service, but the hotels may sell telephone service or not as they choose, p. 11.

Rates, § 568 — Hotel telephones — Additional service to guests — Charges.

9. Additional "secretarial service" cannot be charged by hotels as telephone service moving over public utility lines, but for that service only the tariff ordered by the Commission may be charged, regardless of the right of hotels to charge their guests any amount they please for hotel services or for secretarial services generally, p. 12.

[October 19, 1940.]

PROCEEDING *to enforce telephone tariffs for hotel telephone service; order to compel enforcement of tariff granted.*

APPEARANCES: Gay H. Brown, of Albany (John T. Ryan, of Cortland, Lawrence J. Olmsted, of Syracuse, and Sherman C. Ward, of Albany, of counsel), for petitioner; Charles T. Russell, of New York city (Edward L. Blackman, Ralph W. Brown, and Paul H. Burns, all of New York city, of counsel), for New York Telephone Co.; Campbell & Boland, of New York city (Charles J. Campbell, of New York city, of counsel), for Hotel Roosevelt, Inc.; Bertram L. Kraus, of New York city, for Bowman Biltmore Hotels Corporation; Hall, Cunningham, Jackson & Haywood, of New York city, for Southworth Management Corporation; Newman & Bisco, of New York city (David Barnett, of New York city, of counsel), amicus curiae for New York Hotel Corporation.

BERGAN, J.: In pursuance of an order of the Public Service Commission the defendant New York Telephone Company has filed tariff schedules fixing the rates that hotels may charge their guests for public telephone service. The schedules allow surcharges to be made by the hotels to their guests above the common rates

for public telephone service. The hotels are constituted by the tariffs as the agents of the telephone company in rendering this service. Certain hotels regard the enumerated surcharges inadequate. They deny the power of the Commission to order the tariffs filed and they assert that they are not bound by such tariffs in surcharging their guests.

The Commission has instituted this proceeding in pursuance of Public Service Law, § 103, against the telephone company to enforce the tariffs as filed. The telephone company moved to add the dissenting hotels as parties. That motion was granted ([1940] 174 Misc 517, 35 PUR(NS) 183, 21 NYSupp (2d) 405). Upon the trial the essential facts are stipulated.

It is the free concession of those of all the divergent points of view in this case that the hotels are not public utilities; that there internal affairs are not subject to the regulatory powers of the Public Service Commission. The hotels do, however, sell public telephone service to their guests, and they sell it at a premium above the common rate. Concerning this fact as an actual and regular practice there is no dispute in this case.

[1–5] Whether public telephone service shall be sold at all by a business corporation or private individual is a question well within the regulatory power of the Commission to determine. Public Service Law, Art. 5, § 90 et seq. The sale of such service is closely integrated with the general public interest necessarily involved in the assumption of legislative control over the methods and rates of public utilities. It is, indeed, a rule of quite general application that telephone service is not to be resold by the subscriber. If, in the judgment of the Commission, the public service would be promoted by requiring that service in this field should be sold only directly by the utility itself and not at all by subscribers, its power in this direction would be undoubted.

If it had no such power, the utility could, by wholesaling its service to private enterprises, which were themselves beyond the pale of public regulation, effectively destroy a rate structure and a frame of regulation designed, in the view of the legislature, to promote equal public utility service in the community as a whole.

The power thus to prohibit implies the power to condition a permission. The hotels are allowed to sell a public utility service furnished by the telephone company. They are allowed to surcharge the users of that service. The service as thus sold remains a public utility service. It has value only because there is offered as part of it the facilities of a public monopoly with its franchises and rights all closely affected by public sanction and permission.

The surcharge for the utility service is, when permitted, an integral part of the rate for that service. It should be commensurate with the utility service rendered, and it is within the jurisdiction of the Commission to determine what it shall be.

The hotels contend that they are merely subscribers to the telephone company's service; that they perform, at some considerable expense to themselves, additional and special services for their guests in connection with telephone calls; that this is not public

utility service and hence the charges they make for telephone service above that allowed by the tariffs are their own concern and are not subject to the regulation of the Commission. The difficulty with this argument is that the service they sell is a utility service. It is sold as such. It is only a small part in the totality of investment and technical skill and equipment required to complete the service beyond the hotel switchboard.

Small though it is, it remains a part of such service and the charge that shall be made for public telephone service in its entirety from inception to completion is a matter within the regulatory powers of the Commission. The hotels may not, in thus selling utility service, isolate themselves behind their own walls and beyond the power of regulation of the rates they may charge.

This, in effect, was the determination of the Commission twenty years ago in Connolly v. Burleson, PUR 1920C 243. The decision was followed in principle and by reference by the supreme court of Wisconsin in 1930 in Hotel Pfister v. Wisconsin Teleph. Co. 203 Wis 20, PUR1931A 489, 233 NW 617, 73 ALR 1190. Its principle has been followed by other regulatory bodies. See, as examples: In Arkansas, in Re Hotel Marion Co. PUR1920D 466; Jefferson Hotel Co. v. Southwestern Bell Teleph. Co. (Mo 1936) 15 PUR(NS) 265.

[6] The tariff of the telephone company which the Commission now seeks to enforce establishes the hotels as agents of the company "in rendering telephone service to their guests." The hotels and the telephone company seem apprehensive that there may lie hidden in this relationship implications of far-reaching character. The law of agency is cited with emphasis upon the mutuality required in its inception and the general effects of the relationship. But all agencies are not plenary in the delegated powers given and accepted. This one is sharply delimited in scope by the tariff that creates it.

It imposes no broader undertaking upon the hotels than to see to it that the tariff is carried out. Beyond that I do not understand that the undertaking of the telephone company is enlarged nor the free powers of the hotels constrained. This would be the reciprocal obligation of the utility and the subscribing hotel in any event if the tariff is valid and binding.

If hotels want to sell public telephone service to their guests, they accept a limited agency of the utility company to perform this essentially public utility service in pursuance of the requirements of the tariff. That is the measure of the compulsion. If they do not want to accept this condition of the tariff they need not undertake to sell the public telephone service. The agency provision is valid, I think, but is probably unnecessary. Its inclusion in the tariff does not impair the general validity of the tariff, nor its enforcement under the prayer for relief in this proceeding.

[7, 8] The hotels contend that the tariff is confiscatory as to them; that the cost of plant and services required to connect their guests with outside calls greatly exceeds the return allowed them above the amounts paid the telephone company. The rates, however, carry no compulsion to give service. Confiscation is usually to be asserted only when service must be

given at the required rate. The hotels may sell telephone service or not, as they choose. Like other services provided by a hotel, it may not be profitable when isolated, but to some extent must be treated as part of the conveniences which enter into hotel accommodation and are reflected in the cost to the guest.

This fusing of services makes it impossible, from this record at least, to segregate the cost entirely chargeable to outside telephone service from the general cost of hotel accommodation. Perhaps even after the fullest sort of study is made, resort may have to be had to some arbitrary point between the cost of hotel and utility service to fix a fair surcharge for the utility service, if the present tariff is inadequate.

This may most adequately be done in the pending proceeding before the Commission. A sufficient showing has not been made here to render the plea of confiscation available as a defense to this proceeding. It may be noted in this connection that while the hotel provides only a slight part of the total service and equipment required in completing a local call it is allowed under the tariff over 60 per cent of the total charge to the consumer on most local calls, a percentage dependent upon the total number of calls made monthly from the hotel.

In the field of long-distance calls, the utility gauges the tariff on a scale guided by the distance involved, since distance requires a wider use of public utility facilities and services. The hotels, upon some theory not made fully apparent here, seem to feel that distance somehow entitles them to more money for their services upon a scale based upon a percentage of the utility's charge.

[9] The hotels undoubtedly have the right to charge their guests any amount they please for hotel services or for secretarial services generally, even if these involve reaching other parties by telephone. These matters are not the concern of the Commission. But since the Commission has jurisdiction to order this tariff and since the hotels are bound by it in accepting telephone service, this additional "secretarial service" cannot be charged as telephone service moving over public utility lines. For that service the tariff only may be charged.

Under the facts here shown the Commission is entitled to the order sought, the execution of which is stayed for a period of thirty days after notice of entry.

The papers used upon this application may be obtained by the petitioner at this office for distribution to the proper parties.

SECURITIES AND EXCHANGE COMMISSION

Re Northeastern Water & Electric Corporation

[File No. 70-96, Release No. 2314.]

Consolidation, merger, and sale, § 33 — Holding company acquisition — Complication of corporate structure.

1. Acquisition, by a registered holding company having a large number of water company subsidiaries and a few electric utility subsidiaries, of additional water properties may be authorized although this would increase the complication of the corporate structure of the system, where the company is attempting to dispose of its electric utility properties, regards acquisition of the additional properties as an anticipatory investment of part of the proceeds expected to be realized from such disposition, and is willing to stipulate that if such properties are not disposed of within a period of six months the company will consent to the entry of an order pursuant to § 11(b) (1), 15 USCA § 79k (b) (1) requiring their disposition, p. 16.

Consolidation, merger, and sale, § 52 — Acquisition price — Reasonableness.

2. The Securities and Exchange Commission, under § 10(b) (2) of the Holding Company Act, 15 USCA § 79j (b) (2) must consider whether the proposed consideration for securities to be acquired, including all fees, commissions, and other remuneration paid in connection with the acquisition, is reasonable and bears a fair relation to the sums invested in and the earning capacity of the utility assets underlying the securities to be acquired, p. 17.

Consolidation, merger, and sale, § 47.1 — Fees, commissions, and other remuneration — Reasonableness.

3. The Securities and Exchange Commission must, under §§ 7(d) (4) and 10(b) (2) of the Holding Company Act, 15 USCA §§ 79g, 79j, consider the fees, commissions, and other remuneration incident to an acquisition of securities, not only from the point of view of their effect on the entire transaction, but also from the point of view of whether they are reasonable in themselves, p. 18.

Security issues, § 99 — Holding company security structure.

4. Common stock of a registered holding company, carrying control, which represents but 12.2 per cent of the total capitalization and surplus when added to capital and earned surplus, constitutes a disproportionately small investment under § 1(b) (3) of the Holding Company Act, 15 USCA § 79a, p. 18.

Security issues, § 99 — Standards of Holding Company Act — Effect of stockholders' vote.

5. The circumstance that the issuance of a note which would result in a very thin common stock "cushion" has been approved by the vote of the preferred stockholders cannot affect the duty of the Commission to require

that the standards of the Holding Company Act be met and to protect future as well as present stockholders, p. 18.

Security issues, § 123 — Short-term debt — Financial structure — Condition as to dividends.

6. A condition that no dividends be paid on common stock, until the payment of a short-term note, was attached to an order authorizing the issuance of the note, as necessary and sufficient to protect the interest of preferred stockholders in accordance with the standards of § 7 of the Holding Company Act, 15 USCA § 79g, where the capital structure of the issuing company (the common stock having a disproportionately small but controlling investment) had within it the potentialities of abuse, p. 18.

Security issues, § 15.1 — Powers of Federal Commission — Dividend restriction — Interference with management.

7. The Securities and Exchange Commission, in approving the issuance of securities under § 7 of the Holding Company Act, 15 USCA § 79g, has power to impose a condition restricting the payment of dividends, and such exercise of power does not constitute an unwarranted intrusion on managerial discretion, p. 18.

Commissions, § 44 — Jurisdiction — Interference with management.

Discussion, by Securities and Exchange Commission, of power to impose conditions in its exercise of powers under the Holding Company Act, in view of allegation of unwarranted interference with management, p. 27.

[October 1, 1940.]

APPLICATION *for approval of acquisition of utility assets and declaration with respect to issuance of securities under Holding Company Act; application granted and declaration permitted to become effective subject to conditions.*

APPEARANCES: Adrian S. Fisher, for the Public Utilities Division of the Commission; Shearman and Sterling, by George W. Sheldon and Fairfax Leary, Jr., for the applicant; Allen E. Throop and Frederick P. Glick, representing Willard L. Thorp and Denis J. Driscoll, Trustees in Bankruptcy of Associated Gas and Electric Corporation.

By the COMMISSION: Northeastern Water and Electric Corporation, a registered public utility holding company, incorporated under the laws of Delaware, has filed an application and a declaration under the Public Utility Holding Company Act of 1935 designating §§ 6 (a) (1), 7, 9 (a) (1), and 10 of the act, 15 USCA §§ 79f, 79g, 79i, 79j and Rule U–9C-1 (a) (1) of the General Rules and Regulations promulgated thereunder, as applicable in the proposed transaction.

Nature of the Proposed Transaction

Northeastern Water and Electric Corporation (hereinafter referred to as Northeastern) is a registered holding company in the Associated Gas and Electric system. Northeastern is a subsidiary of Northeastern Water Companies, Inc., which owns approxi-

mately 90 per cent of Northeastern's common stock (but none of its preferred stock, all of which is held by the public). Northeastern Water Companies, Inc., in turn, is a wholly owned subsidiary of Associated Gas and Electric Corporation. All of the above-mentioned companies are utility holding companies which have registered as such under the Public Utility Holding Company Act of 1935. Associated Gas and Electric Corporation is being operated by trustees in bankruptcy appointed in reorganization proceedings, under Chap. X of the Bankruptcy Act, now pending in the United States district court for the southern district of New York. The trustees, because of their indirect control of 90 per cent of the common stock of Northeastern, control a majority of its directors. Northeastern itself is not, however, in bankruptcy, and counsel for the trustees agreed that Northeastern is not within the jurisdiction of the bankruptcy court.

At the present time, Northeastern has 38 subsidiaries which are water companies and 6 subsidiaries which are electric utility companies. The application seeks approval of the Commission for the proposed acquisition by Northeastern from the Federal Water Service Corporation, a nonaffiliate, of 9,900 shares of common capital stock, without par value, and 6,000 shares of $6 cumlative preferred stock, without par value, constituting all the outstanding shares of stock of Union Water Service Company. The consideration to be paid for this stock is $1,225,000 increased by the amount by which the consolidated net current assets of Union and its subsidiaries, as of the last day of the calendar month immediately preceding the date of the closing, shall exceed $60,000 or decreased by the amount by which such consolidated net current assets shall be less than $60,000.[1]

Union Water Service Company (hereinafter called Union), a subsidiary of Federal Water Service Corporation (hereinafter referred to as Federal), owns the entire outstanding capitalization of the following operating companies: Citizens Water Service Company (Pa); Clymer Water Service Company (Pa); Delaware Water Supply Company (Del.); Morris Water Company (Pa.); Neptunus Water Company (N. J.); New Jersey Water Service Company (N. J.); Ocean City Sewer Service Company (N. J.); Ocean City Water Service Company (N. J.); Punxsutawney Water Service Company (Pa). The above-named companies supply water service (and in one instance sewer service) to various communities in New Jersey, Pennsylvania, and Delaware.

As originally filed, the application provided for financing the proposed acquisition entirely by means of a bank loan to Northeastern in the amount of $1,250,000. On September 7, 1940, the last day of hearing, the application was amended so that only $1,000,000 would be borrowed and the balance

[1] The agreement of purchase contains a provision to the effect that if prior to the date of closing the United States district court for the southern district of New York shall not have entered an order approving the agreement or any action which may have been taken by the Associated trustees in authorizing or permtiting the execution of the agreement, then either party shall have the right to terminate all of its obligations under the agreement.

met out of cash on hand. The proposed loan will be represented by Northeastern's 3-year promissory note to Chemical Bank & Trust Company and Schroder Trust Company, who will participate in the amounts of $600,000 and $400,0000, respectively. The note is to bear interest at the rate of 2¾ per cent per annum, provides for semiannual payments of $125,000 in reduction of principal and is to be secured by the stocks being acquired. The declaration before us covers the issuance of this note.

The Acquisition of the Securities of Union and the Standards of § 10

Effect of Proposed Acquisition upon the Holding Company System

[1] At the outset we are confronted with the serious problem of the effect of the proposed acquisition not only upon Northeastern itself but upon the greater holding company system of which Northeastern is a part. Under the act, we are required to disapprove the acquisition if we find that it "will unduly complicate the capital structure of the holding company system of the applicant or will be detrimental to the public interest or the interest of investors or consumers or the proper functioning of such holding company system." (Section 10 (b) (3).) Further, we may not approve the acquisition if it "is detrimental to the carrying out of the provisions of § 11." (Section 10 (c) (1).)

As already noted, Northeastern is itself a holding company. Disregarding any of its parents further removed than Associated Gas and Electric Corporation, Northeastern is the third in a tier of holding companies. Union is likewise a holding company, and thus the acquisition of Union will create in this aspect of the system four tiers of holding companies above the operating subsidiaries. Moreover, it is doubtful whether Northeastern's water properties or the properties of Union proposed to be acquired can remain as part of the far-flung Associated system under the provisions of § 11.

The justification offered for the acquisition by Northeastern of additional water properties at this time is that the resultant increased complication of the corporate structure of the system will be only temporary and that it will not impede the ultimate carrying out of the provisions of § 11.[2] In support of this claim the applicant has called attention to the fact that it is presently attempting to dispose of its electric utility properties located in Ohio, and that it regards the acquisition of the Union properties as an anticipatory investment of part of the proceeds expected to be realized from such disposition. Applicant further states that it is engaged in negotiations with the trustees of Associated, looking toward a complete severance of Northeastern from the Associated system. In this connection we are mindful of the fact that at the time of our consideration of a prior acquisition by Northeastern in 1938, we were assured by Northeastern that it would "within a reasonable time dispose of its electric utility subsidiary

[2] In referring to this acquisition, counsel for the trustees agreed that "so far as the trustees of an estate in reorganization are concerned, it is rather unusual to acquire assets, rather unusual to increase the size of the estate."

companies and thus cease to be a holding company as defined by the act." See Re Northeastern Water & Electrict Corp. (1938) 3 SEC 823, 827, 25 PUR(NS) 272. Up to the present time, the earlier assurances have not been fulfilled. However, there appear to be extenuating circumstances. And as evidence of Northeastern's intention to use its best efforts to dispose of the Ohio electric utility properties as soon as possible, counsel for Northeastern, in the course of oral argument, stipulated that an agreement would be filed with us to the effect that if those properties are not disposed of within a period of six months, the company will consent to the entry of an order by us pursuant to § 11 (b) (1), 15 USCA § 79k requiring their disposition. In view of these circumstances, we have concluded that we may authorize this acquisition. Our order, however, will be effective only upon the filing of such a stipulation.

Purchase Price

[2] Under § 10 (b) (2) we must consider whether the proposed consideration for the securities to be acquired, including all fees, commissions, and other remuneration paid in connection with the acquisition, is reasonable and bears a fair relation to the sums invested in and the earning capacity of the utility assets underlying the securities to be acquired. Union's consolidated net fixed capital (less revaluations) of $3,511,055 [3] and its excess of current assets over current liabilities of $80,690 (as of April 30, 1940), a total of $3,591,745, must be compared with the valuation indicated by the purchase price computed as follows:

Cost of preferred and common stocks adjusted for excess of current assets over current liabilities	$1,245,690
Principal amount of bonds outstanding	2,506,500
	$3,752,190

The purchase price must also be examined from the point of view of earning power. Consolidated gross revenues of Union and its subsidiaries showed a downward trend from 1931 to 1934. Since that year a steady upward trend has been noted, with the result that revenues for the twelve months ended April 30, 1940 were about 11 per cent greater than 1934, but only 2 per cent in excess of 1931. Operating income, on the other hand, while increased over the 1934 low, has not regained former levels and for the year ended April 30, 1940, was approximately 8 per cent below 1931. This is due, in large measure, to the fact that maintenance expenditures and provision for retirements for the year ended April 30, 1940 (totaling 14.7 per cent of gross) were increased approximately 37 per cent over the average for the previous ten years.

Consolidated net income of Union and its subsidiaries for the twelve months ended April 30, 1940, amounted to $80,245 after eliminating nonrecurring expense of $10,216. This is equivalent to a 6.44 per cent return on the purchase price of $1,245,690. Assuming that a saving in interest charges of 1½ per cent could be effected by refunding Union's bonds as contemplated,[4] net income would be

[3] See p. 9, *infra*.

[4] See note c, p. 14.

$122,423, or a return of 8.75 per cent on the investment.[5]

Accordingly, we make no finding under § 10 (b) (2) that the total amount to be paid by Northeastern, including the estimated expense of $20,000, is unreasonable or does not bear a fair relation to the sum invested in Union's subsidiaries or their earning power.

Expenses

[3] Under §§ 7 (d) (4) and 10 (b) (2) we must consider the fees, commissions, and other remuneration, not only from the point of view of their effect on the entire transaction, but also from the point of view of whether they are reasonable in themselves.

No fees or commissions are to be paid either in connection with the proposed acquisition of securities or the issuance of the promissory note to the banks. Expenses in connection with the contemplated transactions, including the filling of the application and declaration with this Commission, are estimated at $20,000. Such expenses are as follows:

To be paid to Northeastern Water and Electric Service Corporation:

Engineering	$3,000
Corporate	500
Financial	1,000
Accounting	2,000
General	2,000
	$8,500

To be paid "others":

Legal (Shearman & Sterling)	$7,500
Stenographic, printing, etc.	500
Traveling	1,500
Misc. out-of-pocket expense	2,000
	$11,500
Total	$20,000

We do not find that these expenses are unreasonable.

Compliance with State Laws

We have been supplied with an opinion of counsel to the effect that all applicable state laws have been complied with, and we therefore make the finding required by § 10 (f).

The Increase in Debt and the Standards of § 7

[4–7] Northeastern proposes to issue a $1,000,000 note, thereby increasing its debt in that substantial amount. We do not, therefore, have the relatively simple problem which arises where debts are contracted primarily for refunding, i. e., as a substitute for already existing debt and at a lower interest rate, thus reducing fixed charges.[6] Nor is this a

[5] This figure does not include any estimate as to the expense of the refunding, and is based on the following items:

Purchase price	$1,245,690
Premium to call 5½'s	50,130
Additional investment to retire 5½'s	114,500
	$1,410,320

[6] We have consistently differentiated between (a) the sale of bonds, the proceeds of which are to be used to refund or retire existing debt with a resultant decrease of fixed charges, and (b) new issues of bonds which will add substantially to the existing corporate debt. The Commission has accordingly permitted refunding bond issues to be sold where the ratio of common stock and surplus (the common stock "'cushion") to total capitalization was relatively low. See, e.g. Re Republic Service Corp. (1937) 2 SEC 44. In some few of such cases the debt was increased by a relatively small amount in order to enable the company to meet the expenses attendant on the refunding operations; but in those cases the increase was temporary, provision having been made for a rapid retirement for the increased debt. See e.g. Re Pennsylvania Power & Light Co. (1939) 5 SEC 684. For discussion of limitations even in refunding cases, *cf.* the concurring opinion of Chairman Frank in Re Southwestern Gas & E. Co. (1940) 6 SEC —, Holding Company Act Release No. 1931.

case arising under the exemption provisions of § 6 (b), 15 USCA § 79f (b).[7]

The transaction must, accordingly, be examined in the light of the standards of § 7. While it satisfies § 7 (c),[8] difficult questions are raised by § 7 (d) which provides:

"(d) If the requirements of subsections (c) and (g) are satisfied, the Commission shall permit a declaration regarding the issue or sale of a security to become effective unless the Commission finds that—

"(1) the security is not *reasonably adapted to the security structure* of the declarant and other companies in the same holding company system;

"(2) the security is not *reasonably adapted to the earning power* of the declarant;

"(3) financing by the issue and sale of the particular security is *not necessary or appropriate to the economical and efficient operation of a business* in which the applicant lawfully is engaged or has an interest;

"(4) *the fees, commissions, or other remuneration* to whomsoever paid, directly or indirectly, *in connection with the issue, sale, or distribution* of the security *are not reasonable;*

. . .

"(6) the terms and conditions of the issue or sale of the security are *detrimental to the public interest or the interest of investors or consumers.*" (Italics added.)

Since the fees to be paid are not unreasonable, we make no adverse findings under § 7 (d) (4). But the creation of a new $1,000,000 debt by Northeastern, and that in the form of a short-term note, does create doubts as to compliance with § 7 (d) (1), (2), and (6) in the light of the following:

The capitalization of Northeastern and Union as of April 20, 1940, each on a consolidated basis, and consolidated pro forma giving effect to the acquisition of Union by Northeastern, is as follows:

[7] For an explanation of the § 6 (b) exemption see Re Dayton Power & Light Co. (1940) 6 SEC —, 33 PUR(NS) 98, Holding Company Act Release No. 1925, and Re Consumers Power Co. (1939) 6 SEC —, 33 PUR(NS) 321, Holding Company Act Release No. 1854.

[8] Section 7 (c) (1) (B) (iii) provides that the Commission may permit a declaration to become effective for a "bond . . . secured by any other assets of the type and character which the Commission by rules and regulations or order may prescribe as appropriate in the public interest or for the protection of investors." In a number of decisions the Commission has held that a debt security, in the form of a note, is a bond within the meaning of § 7 (c) (1) (B), if the note has the normal attributes of a bond. See Re Eastern Shore Pub. Service Co. (1940) 6 SEC —, 33 PUR(NS) 142, Holding Company Act Release No. 1917, and the cases cited in footnote 9 thereof. The note in question is secured by all the common stock and $6 cumulative preferred stock of Union and contains various restrictive covenants, provisions relating to default, etc. It therefore satisfies the requirements of a bond under § 7 (c) (1) (B). Since the loan is to be made by banks well qualified to judge the merits of the risk assumed, because of the fact that the purchase price of the assets pledged is more than the face amount of the note, and because of the further fact that the loan agreement contains no provisions for breaking up the note for sale to the public, it would seem that the assets pledged are of such character as to satisfy the requirements of § 7(c) (1) (B) (iii).

	Northeastern Amount	%	Union Amount	%	Consolidated Pro Forma Amount	%
Subsidiary Funded Debt	$4,621,650	28.5	$.....	...	$4,621,650	23.4
Minority Interests	30,306	0.2	.....	...	30,306	0.2
Parent Co. Debt	.....	...	2,506,500[a]	53.7	3,506,500[b]	17.8
Total Debt and Minority Interest	$4,651,956	28.7	$2,506,500	53.7	$8,158,456	41.4
$4 Pfd., no par stated @ $50 per share (91,579.3 shares)	9,157,930[d]	56.4	.....	...	9,157,930	46.4
$6 Pfd., no par stated @ $100 per share (6,000 shares)	.....	...	600,000[c]	12.9	.....	...
Common stock—$1 par	172,235	1.0	.....	...	172,235	0.9
Common stock no par (9,900 shares)	.....	...	820,000[c]	17.6	.....	...
Capital surplus	1,783,903	11.1	429,021[c]	9.2	1,783,903	9.0
Earned surplus	452,573	2.8	308,132[c]	6.6	452,573	2.3
Total capitalization and surplus	$16,218,597	100.0	$4,663,653	100.0	$19,725,097	100.0

[a] Consists of 1st lien 5½'s due May 1, 1951, secured by entire outstanding debt and preferred and common stocks of subsidiaries.

[b] Includes the $1,000,000 note issued to finance the acquisition.

[c] The difference between the total of stock and surplus items and the purchase price is shown in the consolidated pro forma balance sheet as "net excess of equity in assets of subsidiaries consolidated over investment in subsidiaries consolidated."

[d] The preferred stock of Northeastern is shown at its liquidation value of $9,157,930 (i.e., $100 per share), rather than at its stated value of $4,578,965 (i.e., $50 per share), for the following reasons: In the first place, as we have said elsewhere, the practice of presenting in a balance sheet at $50 per share preferred stocks with a liquidating value of $100 per share is of doubtful propriety. See Re Securities Corporation General (1940) 6 SEC —, Holding Company Act Release No. 1923; Accounting Release No. 9, December 23, 1938; cf. "Footnotes and Financial Statements," an address by William W. Werntz, chief accountant, Securities and Exchange Commission, May 9, 1939. Moreover, Northeastern is a company which resulted from the reorganization—but six years ago, in 1934—of Northeastern Public Service Company, which reorganization was necessary because the debt was excessive. In the scaling down of debt in that reorganization, the preferred stock of the present company, Northeastern, now outstanding, was issued in this manner: The holders of approximately $11,680,900 of general lien and collateral trust 5½% Bonds of the old company received 8 shares of the preferred, and 2 shares of the common, of the new and present Northeastern for each $1,000 of old bonds held by them. The liquidating value of such new preferred represented 80 per cent of the face of the old bonds; one-half of that 80 per cent, or $4,578,965, was included as the stated value of the new preferred, and the balance, or $4,578,965, was shown as part of the capital surplus of Northeastern. It thus appears not only that the outstanding preferred stock, which is publicly held, represents an initial large investment by those to whom the preferred stock was issued in the reorganization, but also that at the present time $4,578,965 of the capital surplus of Northeastern represents a substantial portion of the original investment made by these stockholders. And counsel for Northeastern has conceded that the appropriate method of showing the preferred in the balance sheet is to state it according to the liquidation value.

On a consolidated pro forma basis, then, the debt of Northeastern represents 41.4 per cent of the total capitalization and surplus; the preferred stock 46.4 per cent; and the total of senior securities (debt and preferred stock) 87.8 per cent. The common stock, which carries with it control of the company, when added to capital and earned surplus, thus represents but 12.2 per cent—a "disproportionately small investment." (See § 1 (b) (3) of the act, 15 USCA § 79a (b) (3).)

But even that investment figure needs scrutiny. The following tabulation sets forth the consolidated fixed capital accounts of Northeastern and Union and the consolidated pro forma account giving effect to the acquisition, as of April 30, 1940:

	Northeastern	Union	Consolidated Pro Forma
Gross Fixed Capital per books	$18,442,236	$5,448,971	$23,891,207
Less—Retirement Res.	2,843,088	852,233	3,695,321
Net Fixed Capital per books	$15,599,148	$4,596,738	$20,195,886
Ratio—Reserve to Fixed Capital	15.4%	15.6%	15.5%

Due to the fact that the retirement reserve has not been segregated, it is difficult to determine the exact amount of revaluations (write-ups) remaining in the property account of Northeastern. There is some indication in the record, however, that the intangible assets and appreciation remaining in the net fixed capital account of Northeastern are not in excess of $3,854,892.[9]

Revaluation debits to the consolidated fixed capital account of Union Water Service are $1,511,676.53, of which $425,993.23 is credited to retirement reserve. Elimination of these items results in the following:

Gross Fixed Capital —less revaluations	$3,937,295
Retirement Reserve —less revaluations	426,240
Net Fixed Capital—less revaluations	$3,511,055

Debt and preferred stock ratios are therefore as follows:

	Northeastern	Union	Consolidated Pro Forma
Total Debt to Net Fixed Capital—per books	29.6%	54.5%	40.4%
Total Debt to Net Fixed Capital—less revaluations	39.3%	71.3%	53.5%
Total of Senior Securities, Debt and Preferred Stock, to Net Fixed Capital—per books	88.7%	67.6%	85.8%
Total of Senior Securities, Debt and Preferred Stock, to Net Fixed Capital—less revaluations	117.8%	88.5%	113.5%

On the basis of net fixed capital less revaluations, *there is thus less than nothing represented by the common stock owned, indirectly, by Associated Gas and Electric Corporation.*

This does not take into account Northeastern's preferred stock holdings in nonsubsidiaries which are car-

[9] Revaluations of Northeastern as shown by its U-5-B and U-5-S statements are as follows:

Debits to Fixed Capital	$3,010,646.74
Credits to Retirement Reserve	321,078.20
Net Revaluations	$2,689,568.54

However, the present application contains a statement that revaluations and intangible assets included in the consolidated fixed capital account of Northeastern are not in excess of $3,854,891.90. In its published balance sheets, the company applies this amount in reduction of its gross fixed capital account with the statement that it represents the excess of the parent's equity in the book value of the combined net assets of subsidiaries over the carrying value of the combined investments of the parent in subsidiaries. Accordingly, we have computed the figure for the fixed assets of subsidiaries by deducting $3,854,891.90 from the net fixed capital per books.

ried on its books at $3,461,214, or the excess of Northeastern's current assets over its current liabilities. But even if the carrying value of the preferred stock portfolio of Northeastern is added to the net fixed capital in computing the ratio, the amount represented by the common stock is exceptionally small, as the following ratios indicate:

	Northeastern	Union	Consolidated Pro Forma
Total of Senior Securities, Debt and Preferred Stock, to Net Fixed Capital—less revaluations, plus preferred stock holdings in nonsubsidiaries	90.8%	...	92.5%

On this basis, consolidated pro forma, the common stock represents but 7.5 per cent.

The common stock of Northeastern thus represents, at best, an extraordinarily thin margin or "cushion." Yet that common stock controls a majority of the board of directors of Northeastern, and thus controls the dividend policy of that corporation. Whether and when dividends should be paid on the common stock is, accordingly, solely for the common stockholders to say, even though the payment of such dividends would prevent the increase of the very slender margin or cushion protective of the interest of the public investors in Northeastern's preferred stock.

These facts raise grave doubts with respect to compliance with § 7 (d) (6). For in considering whether the substantial increase of debt will be "detrimental . . . to the interest of investors," we must have in mind (in the order of their priorities) first the interest of the public investors in the preferred stock of Northeastern and then the interest of its common stockholders. As shown above, most of that common stock is owned, indirectly, by Associated Gas and Electric Corporation, and that corporation is in bankruptcy. Its trustees in bankruptcy represent its bondholders and other creditors. We must, of course, regard their interest as indirect investors in Northeastern. But their investment in Northeastern is not as creditors of Northeastern; it consists solely of an indirect interest in Northeastern's common stock; and that common stock is, of course, junior to the direct public investment in Northeastern's preferred stock. In other words, the bondholders and other creditors of Associated Gas and Electric Corporation are merely creditors of a debtor, Associated Gas and Electric Corporation, which indirectly owns most of the common stock of Northeastern. These facts are graphically displayed in the following diagram:

HOW TRUSTEES IN BANKRUPTCY OF ASSOCIATED GAS AND ELECTRIC CORPORATION CONTROL NORTHEASTERN WATER AND ELECTRIC CORPORATION THROUGH A "DISPROPORTIONATELY SMALL INVESTMENT"

TRUSTEES IN BANKRUPTCY OF ASSOCIATED GAS AND ELECTRIC CORPORATION
Representing Its Creditors

Control

ASSOCIATED GAS AND ELECTRIC CORPORATION
A Registered Holding Company

Which Wholly Owns

NORTHEASTERN WATER COMPANY, INC.
A Registered Holding Company

Which Owns Only
Common Stock *of*

NORTHEASTERN WATER AND ELECTRIC CORPORATION
A Registered Holding Company and Its Subsidiaries, Consolidated, without Deducting Write-Ups

	Percentage of Capitalization
Common Stock and Surplus: 90% Owned by Northeastern Water Company, Inc.: $2,400,000. Elects ⅔ of directors and thus *controls* management and *dividend policy.*	12.2%
Preferred Stock: Publicly Owned: $9,100,000. Elects only ⅓ of directors and thus *does not control* management or *dividend policy.*	46.4%
Debt: $8,100,000.	41.4%

Counsel for the trustees in bankruptcy of Associated Gas and Electric Corporation conceded that the trustees had a primary obligation to the creditors of that corporation and therefore had an obligation to consider what was best for the common stock of Northeastern, but that our obligation under the statute is wider since it includes the welfare of Northeastern's preferred stockholders as well as its common stockholders.

In the light of the figures cited—and bearing in mind that the preferred stock of Northeastern was issued in a reorganization, only six years ago, to former bondholders because the debt of the old predecessor company had been excessive—it is not altogether easy to justify, as complying with the standards of § 7 (d), the proposed substantial short-term debt increase, having regard to the security structure (§ 7 (d) (1)) and the interest of the direct public investors in the outstanding preferred stock (§ 7 (d) (6)).

For the striking fact which confronts us is that the common stock "cushion" will be, to say the least, extraordinarily thin. The hazards to which the preferred stockholders are subject by reason of the slim cushion are emphasized by the fact that the common, which represents, at best, only 12.2 per cent of the total capitalization and surplus on a consolidated pro forma basis,—and, on the basis of net fixed capital plus preferred stock holdings in nonsubsidiaries, less revaluations, but 7.5 per cent—controls a majority of the board of directors and the dividend policy of the company. Although the preferred stockholders may elect three of the nine directors of Northeastern, that right is hardly enough to assure protection

of their interests when pitted against the control exercised by the common stock. At best the preferred can elect only a minority of directors. And it is well known that, as a result of their apathy, public preferred stockholders with such rights are not likely to take active steps to maintain an effective voice in the company's affairs. See Report on the Study and Investigation of the Work, Activities, Personnel and Functions of Protective and Reorganization Committees, Part VII (1938), pp. 110, 111. In this connection, it is to be noted that Northeastern is incorporated in Delaware, the laws of which impose the minimum restraints upon directors in respect to the declaration of dividends. And since Northeastern is a holding company operating through subsidiaries in several states, there is no state Commission which has any power to regulate the payment of dividends for the protection of the preferred stockholders. It is true, as the applicant has suggested, that the proposed transaction has been approved by the vote of the preferred stockholders. But this circumstance cannot affect our duty to require that the standards of the act be met and to protect future as well as present stockholders. Moreover, there was never submitted to the stockholders any proposal to restrict dividends on the common stock.[10]

In § 1 (b) (3) of the act, Congress found that the interests of investors ". . . are or may be adversely affected . . . when control of subsidiary public utility companies . . . is exerted through disproportionately small investment." And § 1 (c) expressly directs us to construe all provisions of the act to effectuate the policy of eliminating the "evils" enumerated in § 1 (b). The legislative history of the Public Utility Holding Company Act, as set forth in the Appendix attached to this opinion, clearly demonstrates that one of the evils that Congress sought to remove was the pressure of the holding company with only an interest in common stock, and that representing only a small part of the total investment, to drain off, excessively, the earnings of its utility subsidiaries when the holding company was itself short of funds, thereby injuring the consumers of, and the public investors in the senior securities of, such subsidiaries. We believe that the capital structure in the present case, under which the common stock with its "disproportionately small investment" controls Northeastern, has within it the potentialities for such abuse.

It must also be noted that, unless additional funds are realized by Northeastern through the sale of property, practically all of Northeastern's cash resources will, as a matter of necessity, have to be devoted to the discharge of the interest on and the principal of the proposed 3-year note. If the figures of earnings on a *consolidated* basis were projected for the

[10] The proxy-soliciting material sent by Northeastern to the stockholders referred to the necessity of approval of the proposed transactions by this Commission; therefore, the preferred stockholders might, with justification, have assumed that the Commission would see to it that necessary safeguards were imposed protective of the preferred stock, pursuant to the standards of the statute.

This is not a case where, under §§ 6(b) (2), 11 (f), or 11 (g), stockholders vote after receiving a full report made by this Commission. Cf., for instance, Re Columbia Gas & E. Corp. (1939) 4 SEC 406, 416, 417, 28 PUR(NS) 476; Re Mountain States Power Co. (1939) 5 SEC 1.

three years, then (unless there were a sharp decrease of such earnings) such interest and principal could be liquidated out of earnings.[11] That, however, assumes that the entire earnings of the system will be a continuous potential source of funds for the needs of the parent company, Northeastern. But our experience shows that such an assumption may well not coincide with the actual realities as to availability of funds. Under § 7 (d) (6), particularly, we must have regard to the availability of funds for the continued payment of dividends on the preferred stock. We

[11] A summary of the consolidated income accounts of Northeastern and Union and on a pro forma consolidated basis, giving effect to the acquisition, all for the twelve months ended April 30, 1940, is as follows:

	Northeastern	Union	Consolidated Pro Forma
Total Operating Revenues	$2,509,692	$521,502	$3,031,194
Total Operating Exp. and Taxes	1,747,674	289,773	2,037,447
Operating Income	$762,018	$231,729	$993,747
Other Income	181,013	894	181,907
Gross Income	$943,031	$232,623	$1,175,654
Interest on Total Debt	$192,133	$137,858	$355,772[a]
Other Deductions	10,558	24,736[b]	35,294[b]
Total Income Deductions	$202,691	$162,594	$391,066
Net Income	$740,340	$70,029	$784,588
Preferred Stock Dividends	366,317	36,000	366,317
Available for Common	$374,023	$34,029	$418,271

If the consolidated pro forma figure of $418,271 be projected over the 3-year period, the total (3×$444,053=$1,332,159) minus the principal and interest on the note ($1,056,719) would leave $275,440 available for common over the 3-year period.

	Northeastern	Union	Consolidated Pro Forma
Earnings Ratios:			
Bond Interest—times earned	4.91	1.69	3.31
Fixed Charges—times earned	4.65	1.52[c]	3.09[c]
Fixed Charges and Pfd. Div.—times earned	1.66	1.23[c]	1.58[c]
Earnings per Common Share	$2.17	$3.44[c]	$2.49[c]

[a] Includes first year's interest of $25,782 on $1,000,000 note.
[b] Includes $10,216 nonrecurring expense.
[c] Eliminating nonrecurring expense of $10,216.

The funded debt of Union consists of $2,506,500 principal amount of first lien 5½ per cent gold bonds series A due May 1, 1951. These bonds are secured by the deposit of $2,529,500 principal amount of bonds of subsidiaries of Union. It is presently contemplated that the first lien 5½'s will be refunded by the sale for cash of bond issues of the various Union subsidiaries in an aggregate amount of $2,392,000. The cash thus realized, plus additional cash estimated to be available, will enable Union to redeem the entire issue of the first lien 5½'s. The first lien 5½'s are callable at 102 until May 1, 1942. The call premium would amount to $50,130. Negotiations with an insurance company indicate that subsidiary bonds could be issued on an average of a 4 per cent basis.

Assuming that the bonds of Union subsidiaries are to be issued on an average of a 4 per cent basis, and the 5½ per cent bonds of Union retired, interest charges on the new debt would then be $95,680, or a saving over present interest charges of $42,178.

On this basis and again eliminating nonrecurring expense of $10,216, the pro forma consolidated earnings ratios would be as follows:

	Consolidated Pro Forma
Bond Interest—times earned	3.75
Fixed Charges—times earned	3.47
Fixed Charges and Pfd. Div.—times earned	1.67
Earnings per common share	$2.73

must, therefore, scrutinize the condition of the company on the basis of *corporate* net income. And the following data show that, should the company not withhold payment of dividends on the common stock and not receive cash from other sources, the payment of the preferred dividends would, during the 3-year period, almost surely cease or require further borrowing detrimental to the preferred stock.

Giving effect pro forma to the acquisition of Union and the issuance of the $1,000,000 note, the corporate net income of Northeastern for the year ended April 30, 1940, is as follows:

Net Income of Northeastern	$615,384.44
Add	
Consolidated Net Income of Union	70,028.86
Non-recurring Expense of Union	10,216.40
	$695,629.70

Projecting this income over the 3-year period, we obtain a total of $2,086,889.10. The principal of the note is $1,000,000; the interest for the 3-year period (if liquidation of the principal occurs at the rate originally proposed) will be $56,718.75. The adjusted net income for the 3-year period will thus fail to meet the preferred dividend requirements:

Preferred dividend requirements (3 years @ $366,317.20)	$1,098,951.60
Adjusted net income of Northeastern ($2,086,889.10, less principal and interest on note, $1,056,718.75)	1,030,170.35
Deficit	$68,781.25

If a proposed refunding of Union's bonds is carried out, interest savings will result, but the net effect of the refunding will be reflected as follows:

Net Income of Northeastern	$615,384.44
Add	
Consolidated net income of Union	70,028.86
Non-recurring expense of Union	10,216.40
Interest savings on refunding 5½'s	42,177.50
	$737,807.20

There will be a call premium on the Union 5½'s, however, of $50,130, and since the refunded issue would exceed the new issue by $114,500, that excess must also be regarded in the following summary of requirements for the 3-year period:

Principal and interest of note ...	$1,056,718.75
Premium on retiring 5½'s	50,130.00
Excess of refunded issue over new issue	114,500.00
	$1,221,348.75

Again projecting the net income over the 3-year period and subtracting the foregoing requirements, we observe that the adjusted net income fails by a still wider margin to meet the preferred dividend requirements:

Preferred dividend requirements	$1,098,951.60
Adjusted net income of Northeastern (3 times $737,807.20, minus requirements as summarized, $1,221,348.75)	992,072.85
Deficit	$106,878.75

It is true that Northeastern, immediately after the issuance of the proposed note and the acquisition of Union, will have on hand approximately $280,000 in cash. But, deducting the deficits, above noted, from that amount of cash would leave Northeastern with such a slim amount of cash as to make highly questionable the possibility of continued payment of preferred dividends without further borrowing—unless no dividends were paid during the 3-year period on the common stock.

Moreover, we cannot overlook the possibility that Northeastern may

again be required to come to the financial assistance of its subsidiaries, as has recently happened. See Re Northeastern Water & Electric Corp. (1940) 8 SEC —, Holding Company Act Release No. 2210.

Northeastern, as we have observed, plans to sell its four electric subsidiaries located in Ohio, and the transaction which is now pending before the Ohio Commission, if consummated, will result in the receipt by Northeastern of approximately $1,900,000, which, under the terms of the proposed note, would have to be applied to the payment of that note. But the transaction for the disposition of those Ohio subsidiaries cannot be consummated without our permission under an application not yet filed, and we are not now able to determine that such a disposition can be permitted to become effective. Moreover, there are other contingencies which might prevent consummation of that transaction. In that connection we note again that we were given assurances twenty-five months ago that those properties would be sold within a reasonably short time, but that Northeastern was unable to live up to those prior assurances.

These facts, in the absence of other circumstances, might require that the Commission make adverse findings under § 7 (d) and deny permission to carry out the transaction. But there are these offsetting factors: The record indicates that the sale of the common stock at this time would be precluded by the complexities in the financial structure of Northeastern. Even if Northeastern is unable to obtain cash from the sale of any of its Ohio properties during the next three years, nevertheless its earnings, on a corporate basis, will suffice (1) to pay the interest and liquidate the principal of the note and also (2) to make possible the payment of full dividends on the preferred stock for two of the three years and a considerable portion of such dividends for the third year—*provided* that during the 3-year period no dividends are paid on the common stock.

Accordingly, having in mind all the foregoing facts, in order to make the proposed issuance of the substantial short-term debt obligation conform to the standards of § 7 (d) (1) and (2), and especially to protect the interest of the preferred stockholders in accordance with the standard of § 7 (d) (6), we deem it necessary and sufficient to attach a condition to our order, pursuant to § 7 (f), that no dividends be paid on the common stock until the $1,000,000 note is paid.[12]

Counsel for Northeastern has urged that the imposition by us of a condition restricting the payment of dividends would constitute an unwarranted intrusion on managerial discretion. We think this contention is without merit, for it is our statutory duty to determine whether the proposed transaction conforms to the applicable standards of the act. Of course, managerial judgment is one of the facts to be considered in arriving at our statutory findings. But it is equally clear that we must condition our approval of the issuance of utility secur-

[12] If Northeastern is able to dispose of the Ohio electric companies and use the proceeds to retire the note, the condition imposed by us will, of course, by its own terms, be no longer effective. Also, if there are any other changed circumstances, Northeastern can at any time apply to us for a modification of the restrictive condition.

ities—even if management deems unconditional issuance desirable—if we find that conditions are necessary to achieve the standards of the act. Indeed, had Congress intended that there be no interference with transactions proposed by management, there would have been no need for such a regulatory act.

If the text of the act were not clear enough on this point, the legislative debates and history reveal that in every stage of the promulgation of the statute, Congress intended and desired that the statute impose a duty upon the Commission to require that transactions proposed by the management of public utility holding companies and their subsidiaries be exercised in conformance with the standards of the act.[13] In view of the seriousness with which this question was argued, we have thought it appropriate to trace through the genesis and development of the Public Utility Holding Company Act with particular reference to the restrictions on managerial judgment which were intended to be imposed by the statute. See Appendix *infra*.

As we have pointed out, the interest of the Associated trustees in this case arises by reason of an indirect holding of 90 per cent of the common stock and control of Northeastern. Our statutory powers and duties under §§ 7 and 10 of the Public Utility Holding Company Act are in no way diminished by the fact that Northeastern is controlled by the Associated trustees who are, in turn, subject to the supervision of the bankruptcy court. Re Pollak, Trustee of Associated Gas & E. Co. (1940), 35 PUR (NS) 304, 8 SEC —, Holding Company Act Release No. 2274.[14] And this has been admitted by counsel for the Associated trustees.

Counsel for the trustees of Associated, however, has adopted the con-

[13] For other cases in which we have attached conditions restricting dividend payments, or otherwise protecting preferred stocks against a thinning of the common stock "cushion," see e. g. Re Public Service Co. of Colorado (1939) 5 SEC 788; Re Philadelphia Co. (1940) 6 SEC —, 33 PUR(NS) 43, Holding Company Act Release No. 1905; cf. Re Columbia Gas & E. Corp. (1939) 4 SEC 406, 418, 28 PUR(NS) 476; Re Securities Corporation General (1940) 8 SEC —, Holding Company Act Release No. 2301.

For general discussions of the importance to senior security holders, including holders of preferred stock, of a common stock "cushion" or "margin," see our Protective Committee Report, Part VII, pp. 487–488; Graham and Dodd. Security Analysis, (2d edition, 1940) pp. 269–273; cf. our Report on Investment Trusts and Investment Companies, Part III, Chap. V pp. 13, 29.

[14] The bankrupt estate of Associated Gas and Electric Corporation is being administered pursuant to Chap. X of the revised Bankruptcy Act. The Public Utility Holding Company Act itself makes it clear that the administration of registered holding companies in bankruptcy must conform with the requirements of the act. Thus references to the administration of estates of such companies are found in §§ 2(a) (2), 2(a) (16), 7(c) (1) (D), 7(c) (2) (A), and 11(f). It follows a fortiori that a subsidiary of a registered holding company in bankruptcy is subject to the Public Utility Holding Company Act.

It is significant that Congress made no change in the Public Utility Holding Company Act of 1935 when it revised the Bankruptcy Act in 1938. And, in fact, the legislative history of the Chandler Act clearly indicates that Congress did not intend to modify in any way the jurisdiction and powers of this Commission under the Public Utility Holding Company Act. See Sen. Rep. No. 1916, 75th Cong. 3rd Sess. p. 31:

"Section 178, which is also derived from § 7 B (e) (2), contains the further requirement of approval of plans in the case of intrastate public utilities by Commissions possessing the power and duty to do so under the appropriate state law. Of course, the jurisdiction over public utility corporations granted by other statutes, as, for example, the jurisdiction of the Securities and Exchange Commission under the Public Utility Holding Company Act of 1935, is in no way to be affected by any of the provisions of this chapter."

tentions advanced by Northeastern and, in addition, has urged that imposition of a condition temporarily restrictive of the payment of dividends on the common—the bulk of which dividends, if paid, would flow to the trustees—will be detrimental to the best interests of the Associated estate. It is suggested that such a restriction would be difficult to explain to creditors of Associated Gas and Electric Corporation, who are inquiring why they are not receiving payments on their claims out of funds derived from the earnings of the subsidiaries. We desire, so far as our duty under the Holding Company Act permits, to assist the trustees in procuring funds with which to pay the claims of the creditors they represent. But a plain exposition of the facts by the trustees to the creditors would make it clear that even if the upstream flow of funds to the trustees from the subsidiaries were entirely unrestricted, there could be no payments to the creditors in the reasonably near future. For the trustee in bankruptcy of Associated Gas and Electric Company is asserting that he has a huge creditor claim, in the amount of many millions of dollars, against the estate of Associated Gas and Electric Corporation. (See Re Pollak, Trustee of Associated Gas & E. Co. *supra.*) He has asserted before the bankruptcy court that this huge creditor claim is, at least, on a par with the claims of the general creditors of the estate of the corporation. In those circumstances, until trustee Pollak's claim is litigated and finally determined—an event, unfortunately, not likely to occur for many months[15]—it would seem impossible for the corporation's trustees lawfully to make any payments on the general claims against it. And those same facts serve to show that there is no present pressing need for the corporation's trustees to obtain funds, by way of dividends from Northeastern, to make payment to the corporation's creditors. Consequently, we do not believe there is any basis for concluding that restriction of dividends on the common stock during the life of the Northeastern note will be prejudicial to the estate of Associated Gas and Electric Corporation.[16]

It was suggested at oral argument that in lieu of the imposition of a condition restricting dividends, Northeastern would agree to give ten days' notice to the Commission of any proposed declaration of dividends so that a hearing might be held and, if it were deemed necessary, an order entered, under § 12 (c) of the act, 15 USCA § 79e.[17] We need not discuss here

[15] Our desire to have that litigation expedited is expressed in our opinion in Re Pollak, Trustee of Associated Gas & E. Co. *supra.*

[16] During this period, its equity will be increased by the amounts which might otherwise be paid to it as dividends, and the restriction will bring about the profitable employment of this money at a point much closer to the actual operating companies of the system.

[17] Section 12(c) reads:

"It shall be unlawful for any registered holding company or any subsidiary company thereof, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, to declare or pay any dividend on any security of such company or to acquire, retire, or redeem any security of such company, in contravention of such rules and regulations or orders as the Commission deems necessary or appropriate to protect the financial integrity of companies in holding company systems, to safeguard the working capital of public utility companies, to prevent the payment of dividends out of capital or unearned surplus, or to prevent the circumvention of the provisions of this title or the rules, regulations, or orders thereunder."

the scope of the standards of § 12 (c) and 7 (d). Our obligation in this proceeding is to require adherence to the standards of § 7 (d), and we believe that § 7 (f) provides the more appropriate means for assuring such adherence. In so far as the suggestion is advanced as a procedure whereby the propriety of a declaration of dividends at any time during the life of the note may be considered in the light of changing circumstances, we think the suggestion has merit. But such a procedure is readily available even if a condition is imposed under § 7 (f). Our order will specifically provide that it shall be subject to appropriate modification upon a showing of any material change in circumstances. The action taken in this proceeding is, of course, also without prejudice to any further action which may be necessary under § 12 (c) or any other provision of the act.

An appropriate order will accordingly issue.

Appendix

In analyzing the contention that restrictions such as we have imposed in the instant case constitute unwarranted interference with managerial judgment, it is important to make clear the broad duties which Congress, by statute, imposed upon this Commission with respect to securities issued by registered public utility holding companies and their subsidiaries. This Commission has no similar pervasive powers with respect to the issuance of securities by corporations in general; our statutory powers and duties as to corporations in general are found principally under the Securities Act of 1933. Under that act we can only prevent the sale of securities where the truth has not been told about them. If the truth has been told and if no improper means are used in the sale of the securities, the Commission has no duty or power to prevent their sale, regardless of how unsound the securities may be.

But with respect to securities of registered public utility holding companies and their subsidiaries, Congress by a distinct statute, the Public Utility Holding Company Act of 1935, imposed larger duties and powers upon this Commission.[1] Thus Congress explicitly stated that it would be unlawful to sell such utility securities without the permission of this Commission and further provided that this Commission should not give such permission if the securities do not conform with certain statutory standards contained in the act. In other words, as to such utility securities, the fact that the management considers their issuance desirable is not in and of itself sufficient any more than is a similar decision by a railroad management to issue railroad securities as to which the Interstate Commerce Commission must give its permission. As Congress, in the clearest terms, directed this Commission to prevent the issuance of such utility securities, if they were not of a kind which met the standards established by Congress, this Commission has no choice in the matter. Its obligation is to deny permission to issue or sell a security of a util-

[1] A considerable amount of confusion has resulted from this failure to understand that the Commission's powers with respect to public utility holding companies and their subsidiaries under the Public Utility Act of 1935 are distinct and different from its powers with respect to security issues in general under the Securities Act of 1933.

ity company when it finds that such security does not meet the standards set forth by Congress.

Such restriction by legislation on the issuance of securities of public utilities is, of course, nothing new. For decades, state Commissions have had authority over the issuance of securities by public utility companies[2] and have, again and again, under state laws relating to such companies, prevented the sale of such securities.[3]

With respect to the sale of railroad securities the Interstate Commerce Commission twenty years ago was given similar veto powers and duties under § 20 (a) of the Transportation Act of 1920. *"Such encroachment upon the domain of management* as necessarily followed from the restrictions imposed upon the freedom of railroad directors in raising capital funds and in determining the terms and conditions of the instruments issued therefor *was but incidental to safeguarding this public interest.* The *initiation* of financial policies was *left undisturbed* in the hands of the carriers; *the functions of the Commission are primarily those of review, with a broad discretion to order changes as a condition of its approval."*[4] (Italics added). Pursuant to that statute, the ICC, in the fifteen years that elapsed between the enactment of that statute and the enactment of the Public Utility Holding Company Act of 1935, had frequently denied permission to issue railroad bonds in amounts which that Commission found to be improper under the standards of that statute except on conditions attached by that Commission.[5] When, in 1935, Congress en-

[2] See Bonbright Utility Regulation Chart, 1940 Moody's Public Utilities, p. a80 et seq.

[3] Relatively recent cases are Re Consumers Gas Co. (Cal) PUR1930C 182; Re Commonwealth Electric Co. (NJ) PUR 1923A 254; Re Millville Electric Co. (NJ) PUR1921A 665; Re New Hampshire Power Co. (NH) PUR1924B 377, 379–381; Re Tri County Electric Co. (Mass 1937) 19 PUR(NS) 113; Re Independence Waterworks Co. (Mo) PUR1929E 96; see dissenting opinion of Commissioner Musser in Re Public Service Co. (Mo) PUR1925C 208, 210; cf. Re Northwestern Pub. Service Co. (Neb) PUR1926B 585.

[4] Sharfman, The Interstate Commerce Commission, Vol. I, pp. 190, 191. The author also says (p. 190):

"These financial provisions were the response of Congress to a public demand that had been growing in volume and insistence for more than a decade. Their enactment was not only a fulfilment of the Commission's repeated recommendations, but grew out of a practical unanimity of opinion among the numerous and diverse interests that sought to influence the character of the new legislation. While this extension of the Commission's authority was designed, indirectly, to protect the investing public against the dissipation of railroad resources through faulty or dishonest financing, its dominant purpose was to maintain a sound structure for the rehabilitation and support of railroad credit, and for the consequent development of the transportation system. It aimed to render impossible the recurrence of the various financial scandals, with their destruction of confidence in railroad investment, which had become notorious, and to prevent the subordination of the carriers' stake as transportation agencies to the financial advantage of alien interests."

[5] See, for example Re Eastland, Wichita Falls & Gulf R. Stock and Bonds (1922) 72 Inters Com Rep 181; Re Graysonia, N. & A. R. Co. (1923) 79 Inters Com Rep 289; Re Louisiana R. & Nav. Co. of Texas (1924, 1925) 90 Inters Com Rep 229, 99 Inters Com Rep 357. Cf. Cisco & N. E. R. Co. (1921) 70 Inters Com Rep 260; Re Detroit & Toledo S. L. R. Co. (1921) 70 Inters Com Rep 322; Re Apache R. Co. (1922) 71 Inters Com Rep 245; Re St. Louis-S. F. R. Co. (1923, 1924) 79 Inters Com Rep 323, 86 Inters Com Rep 818; Re Stock of Interstate R. Co. (1923) 82 Inters Com Rep 359; Re Wildwood & Delaware Bay Short Line Bonds (1923, 1925) 82 Inters Com Rep 825, 94 Inters Com Rep 682; Re Stock of Alton & S. R. Co. (1924) 90 Inters Com Rep 363; Re Bonds of Kentucky & I. T. R. Co. (1925) 99 Inters Com Rep 215; Re Securities of National Coal R. Co. (1925) 99 Inters Com Rep 787; Re Bonds of New York Connecting R. Co. (1926) 105 Inters Com Rep 402; Re Bonds of Tennessee R. Co. (1926) 111 Inters Com Rep 362.

acted the Public Utility Holding Company Act, it modeled § 7 (d) of that act on the provisions of § 20 of the Transportation Act of 1920; Congress, however, granted this Commission somewhat more extensive duties and powers as to utility security issues than had been granted to the ICC over railroad security issues under the Act of 1920. It would seem that Congress, in adopting the 1935 Act, had in mind the operations of the ICC with respect to railroad securities in the preceding fifteen years. Since that Commission had, pursuant to the 1920 Act, "interfered" with managerial judgment when that judgment was not in accord with the statute, it is clear that Congress intended that the Securities and Exchange Commission should do likewise when transactions proposed by the management of utility companies did not conform with the requirements of the 1935 Act. On the floor of Congress, in the debates on that legislation Senator Wheeler, who, in the Senate was its chief sponsor and Chairman of the Committee which recommended its enactment, declared that the Securities and Exchange Commission "is directed to examine future issues of securities so that the very evils which have crept into holding company finances will be stopped in the future. The measure sets up requirements which new issues must meet, or else the Securities Commission will have to stop their issue."[6]

As stated by the house committee which considered the act: "These provisions taken together subject to examination by the Commission, and give the Commission *veto power* over, security transactions of registered holding companies and certain of their utility subsidiaries . . ." (H. R. Rep. No. 1318, 74th Cong. 1st Sess. pp. 12, 13.) (Italics added.)

The novelty of the 1935 Act, in that respect, was only that it gave an agency of the *Federal* government supervision over, or "veto power" with respect to, the issuance of *utility* securities—that is, securities issued by a registered utility holding company or any of its subsidiaries.[7] In other respects there is nothing fundamentally new in the 1935 Act as to the issuance of securities, for the exercise by governmental agencies of "veto power" with respect to such companies has had a long history.

Nor did Congress enact the Public Utility Holding Company Act without much study and thought. Congress, in the act itself, recites that the legislation is based upon the elaborate studies and reports of the Federal Trade Commission and of congressional committees which themselves spanned some seven years of investigation and study. Congress itself gave the act the title, "Control of Public-Utility Holding Companies." The first subcaption is entitled "Necessity for Control of Holding Companies." And the very first statement asserts that public utility holding companies and their subsidiaries are affected with a national public interest. Section 6, 15 USCA § 79f is captioned "Unlawful Security Transactions by Reg-

[6] 79 Cong. Rec. 8437.

[7] Where the issue or sale of securities by a subsidiary of a registered holding company is solely for the purpose of financing the business of such subsidiary and the state Commission of the state in which the subsidiary is both organized and doing business has authorized the securities to be issued, the powers of this Commission are narrower. See § 6(b).

istered Holding and Subsidiary Companies." Section 6 (a) begins with the statement that, except in accordance with a declaration or application approved by the Commission under § 7, 15 USCA § 79g, "it shall be unlawful for any registered holding company or subsidiary company . . . to issue or sell any security. . . ."[8] Section 7 then sets forth the basic procedures and authorizes the promulgation of a form for such declaration or application to issue or sell securities. Subsections of § 7 provide certain basic standards which Congress insisted must be met in order to enable the Commission to grant permission to issue securities pursuant to such declaration or application.

Section 7 (f), which is of particular relevance in this case, provides:

"Any order permitting a declaration to become effective may contain such terms and conditions as the Commission finds necessary to assure compliance with the conditions specified in this section."

Some of the legislative history of this subsection helps give it meaning. The Senate Committee Report of May 13, 1935, said of § 7 (f) (Sen. Rep. No. 621, 74th Cong. 1st Sess. p. 28):

"Subsection (f) sets forth the terms and conditions which the Commission may prescribe in an order permitting a declaration to become effective. These terms and conditions are designed to give adequate protection to investors and consumers in the course of future financing by companies in holding-company systems and to ensure that future developments are dictated by, and not detrimental to, the business needs of integrated units and are in accord with the underlying purpose of the legislation to give to investors and consumers full protection against the deleterious practices which have characterized certain holding company finance in the past . . ."

Although § 7 (f) of the Senate bill (S. 2796) to which this report referred set forth in some detail what terms and conditions might be required by the Commission, these particular terms and conditions were expressly designated in that bill as not exclusive. In final conference, the detailed description of terms and conditions was eliminated, and the Commission's powers stated more generally to include such terms and conditions as the Commission finds necessary to assure compliance with the conditions specified in the section.

It is abundantly clear, therefore, that Congress wanted to leave no doubt that this Commission would have the express authority and duty to regulate the issuance of securities of utility companies by refusing to permit such securities to be issued, even though approved by the management, if they do not comply with the statutory standards. And it is equally evident that Congress intended that this Commission should impose terms and conditions upon approving the issuance of securities if the Commission found such terms and conditions necessary to assure compliance with the statutory requirements.

The purpose of Congress in assigning to such an agency as this Commission the duty to apply the standards of such a statute as the Public Utility

[8] Section 6(b) provides for the exemption of certain types of securities and securities transactions from the provisions of § 6(a).

Holding Company Act is illuminated by the following comment on this Commission in Securities and Exchange Commission v. Associated Gas & E. Co. of the circuit court of appeals for the second circuit [1938] (99 F(2d) 795, 798, 26 PUR(NS) 399, 404) with respect to its jurisdiction under the Public Utility Holding Company Act. In that case Judge Augustus N. Hand stated:

"One of the principal reasons for the creation of such a bureau is to secure the benefit of special knowledge acquired through continuous experience in a difficult and complicated field. Its interpretation of the act should control unless plainly erroneous. In no other way can the objects of the act be attained without constant and disconcerting friction."

The statute itself and its legislative history show that Congress deemed these powers of supervision over the management of public utility holding companies to be of particular necessity and importance in cases, such as that presented here, where the management exercises control of subholding companies and operating systems through a disproportionately small investment, and, in effect, disenfranchises the public holders of senior securities. In § 1 (b) of the act, 15 USCA § 79a, Congress refers to the underlying facts disclosed in the studies and reports of the Federal Trade Commission and congressional committees. Relying upon these facts, it then concludes that the interests of investors "are or may be adversely affected," among other things, "when *control of subsidiary public utility companies . . . is exerted through disproportionately small investment.*" Following the subsection in which that language is used, Congress goes on to say (§ 1 (c)): "When abuses of the character above enumerated become persistent and widespread the holding company becomes an agency which, unless regulated, is injurious to investors, consumers, and the general public; and *it is hereby declared to be the policy of this title, in accordance with which policy all the provisions of this title shall be interpreted, to meet the problems and eliminate the evils as enumerated in this section, connected with public utility holding companies. . . .*" (Italics added.) Thus, Congress described as one of the evils or abuses of utility holding companies their control over the managerial judgment of their subsidiary companies through a *"disproportionately small investment."* Congress well knew from its studies of the industry that the major portion of the investment in the subsidiary companies consisted of bonds or notes and preferred stocks of such subsidiary companies sold directly to the public. And Congress knew equally well that the holding companies frequently controlled subholding company and operating subsidiaries through a "disproportionately small investment" consisting of an investment in a thin equity constituted by the common stock of the subholding company. In the hearings before the congressional committees and in the debates in Congress the point was made repeatedly that one of the major purposes of this legislation was to protect such direct public investors in subsidiary companies' bonds and preferred stock against the disproportionate control, exercised through that small investment in common stock by

the controlling holding company. For it was pointed out that one of the major abuses committed by holding companies was the bleeding of their controlled subsidiaries through the sucking-up into the holding company of an excessive amount of the earnings of the subsidiaries; in that way the earnings, which otherwise would create a protective reservoir for the investment of the "senior security holders" in those subsidiaries, were siphoned off to the grave disadvantage of such senior security holders. Such excessive drainage of earnings was regarded as one of the chief evils of the technique of "pyramiding" [9] which was one of the prime characteristics of the holding company device. That abuse often took the form of the so-called "upstream loan" which Congress made unlawful in § 12 (a), 15 USCA § 79l. The Senate Committee on Interstate Commerce, in its report of May 13, 1935, pointed out that the exaction of excessive dividends from subsidiary companies could be "even more harmful than the taking of upstream loans" (Sen. Rep. No. 621, 74th Cong. 1st Sess. p. 35) and noted that it was for that reason that Congress inserted § 12 (c) making it unlawful for any holding company or any subsidiary to pay any dividend on any security in contravention of such rules and regulations or orders as this Commission deems necessary or appropriate "to protect the financial integrity of companies in holding company systems."

Because of the unfairness resulting from the use of the disproportionately small investment of the holding company in its subsidiaries, Congress also enacted § 11 (b) (2), 15 USCA § 79k (b) (2) which in part provides that this Commission require steps to be taken "to ensure that the corporate structure . . . of any company in the holding company system does not . . . unfairly or inequitably distribute voting power among security holders." That protection of public holders of senior securities (bonds and preferred stocks) of the subsidiaries against the misuse of holding company control of such subsidiaries was among the principal congressional purposes is apparent from the statement made by Representative Rayburn, one of the two principal sponsors of that act, on the floor of the House on June 27, 1935. In part he said: "A generalized description of the holding company operations is given somewhat as follows: A holding company acquires a number of operating properties. It then organizes a new company or companies to which the properties are conveyed at a figure far in excess of what the holding company paid. The property accounts of the new operating company reflect the excessive price paid. The new company pays for the properties transferred to it by delivering bonds, preferred stock, and common stock to the holding company. The holding company proceeds to sell the bonds and preferred stock, usually for enough to recover a large part, if not all, of its original investment in the properties. The holding company retains the common stock, and hence, the control of the new operating company. It may then resort to various devices to exact as much revenue as possible from the operating company for its own profit and to support its own inflated

[9] See Graham and Dodd, Investment Analysis (2d ed. 1940) pp. 662, 667–8.

capitalization (79 Cong. Rec. 10321). . . . This creature of our statutes holds under its control billions of dollars' worth of property scattered throughout the country. . . . Its decisions can . . . siphon off the earnings of profitable companies beyond the reach of their stockholders to the stockholders of other companies. . . . These creatures of our legal ingenuity are . . . used as the agencies for disfranchising stockholders of thousands of necessary and prosperous operating companies. . . . Through the simple device of pyramiding, a small investment by those in control of the top holding company enables them to do as they like with hundreds of millions, and in some instances even billions, of other people's property. . . . The holding company device has been pyramided to give a few small but powerful groups control of the billions of dollars of the public's money invested in the utility industry. This has placed the great utility properties of the country in the control of men who themselves have only a small stake in their real ownership (79 Cong. Rec. 10317–18). . . . In order to support their own inflated capitalization and earn profits for themselves and the holding companies higher up in the series, the holding companies have resorted to various devices to extort the largest possible amount of revenue from the operating companies (79 Cong. Rec. 10322). . . .

"What I want to do is to take from the backs of the clean, honestly operated operating companies of this country these . . . holding companies, . . . who are milking to death . . . those who have invested their hard-earned money in the securities of these local operating companies (79 Cong. Rec. 10319). . . .

"The Securities Commission is directed to examine future issues of securities by registered companies and such of their subsidiary operating companies as do not have their security issues regulated by state Commissions. Section 6 requires each new issue of such companies to follow a procedure of a declaration filed with the Commission setting forth the facts in connection with the issue . . . . Section 7 outlines the procedure to be followed, and sets up the requirements which must be met in new security issues. *It directs the Commission to stop any issue which fails to meet those requirements.* . . . These provisions will reach a wide range of practices—all of which have been a frequent source of injury to the public by reason of the fact that the holding company sits on both sides of the transaction and dictates its terms—often with flagrant disregard of the best interests of investors and consumers. . . ." (79 Cong. Rec. 10324).

"State governments stand helpless in the presence of these supercreatures. Whole states are served with power . . . by operating companies in the charge of employees who have no authority, no independence of judgment." (79 Cong. Rec. 10317).

Without doubt, the maximum of those abuses explicitly condemned by Congress in the statute, and which it directed this Commission to prevent, existed in the Associated Gas and Electric System. The gross injuries done to investors as a result of the finan-

cial structures erected by the past management are a matter of common notoriety.

Associated Gas and Electric Corporation is now in the bankruptcy court. Trustees in bankruptcy have succeeded to the Hopson management. The Public Utility Holding Company Act itself makes it clear that the administration of registered holding companies in bankruptcy must conform with the requirements of the act. Thus, references to the administration of estates of such companies are found in §§ 2 (a) (2), 2 (a) (16), 7 (c) (1) (D), 7 (c) (2) (A) and 11 (f). See Pollak, Trustee of Associated Gas & E. Co. (1940) 8 SEC, —, 35 PUR (NS) 304, Holding Company Act Release No. 2274. It follows a fortiori that a *subsidiary* of a registered holding company in bankruptcy is subject to the act. And it is clear that Congress did not intend in the Chandler Act to modify in any way the jurisdiction and powers of this Commission under the Public Utility Holding Company Act. See Sen. Rep. No. 1916, 75th Cong. 3rd Sess. p. 31. Thus, the control by those trustees of the subsidiaries is still subject in all respects to the provisions of the Public Utility Holding Company Act. The trustees have no more power to cause such subsidiaries to issue securities not in compliance with the provisions of the act than did Associated Gas and Electric Corporation when it was under the control of the Hopson management.

Accordingly, that Associated Gas and Electric Corporation is under the supervision of a Federal court sitting in bankruptcy, through trustees in bankruptcy, does not in any way relieve us of our statutory duties under the Holding Company Act. It is still our plain statutory duty to protect the direct public investors—including the public holders of bonds and preferred stocks—of the subsidiaries of that holding company. The disproportionately small investment of Associated Gas and Electric Corporation in any subsidiary may not be exercised to the detriment of those direct public investors in that subsidiary in violation of the Holding Company Act, merely because the exercise of the power to control that subsidiary, through ownership of its common stock conferred by that disproportionately small investment, has been transferred to trustees in bankruptcy of the Associated Gas and Electric Corporation.

We have never intended, nor do we ever intend, to encroach in any way on the jurisdiction or powers of the bankruptcy court in which the bankruptcy proceedings relating to Associated Gas and Electric Corporation are pending. And we have every desire, within the limits of our statutory duties, to cooperate with the bankruptcy court and its trustees in order to protect the investors and creditors of the estate of that corporation. But neither we nor the bankruptcy court nor the trustees can disregard the clear provisions of any act of Congress. Both the bankruptcy court and the trustees derive all their powers, with respect to that estate, from an act of Congress, the Bankruptcy Act. And they and we, alike, are bound by all pertinent laws enacted by Congress—including the Public Utility Holding Company Act. No order of the bankruptcy court can relieve this Commission of its plain duties under that act. Nor can any or-

der of that court exempt the trustees in bankruptcy from the provisions of that act applicable to them, any more than it could exempt them from the applicable provisions of the Federal income tax law. It follows that neither the bankruptcy court nor this Commission can lawfully exempt, from the provisions of the Holding Company Act, the declarant, Northeastern, which is itself a registered utility holding company, merely because the great majority of its common stock (representing a relatively small part of the investment in that company) is owned by another controlling holding company, Associated Gas and Electric Corporation, which is within the jurisdiction of the bankruptcy court.

UNITED STATES DISTRICT COURT, N. D. OHIO, E. D.

William N. Hamilton

v.

Western Union Telegraph Company, Incorporated

[No. 20221.]

(34 F Supp 928.)

Injunction, § 32 — Against service denial — Illegal use.

1. A court of equity will not restrain a telegraph company from discontinuing leased wire service if there is justification for the company's belief that telegraph information transmitted to the plaintiff is being used for an illegal purpose, p. 40.

Service, § 134 — Grounds for denial — Illegal use — Telegraph.

2. A telegraph company is not only authorized but is obligated to discontinue service which contributes to and facilitates the operation of a business or enterprise in violation of law, p. 40.

Injunction, § 37 — Motion to dissolve — Burden of proof.

3. A preliminary injunction restraining a telegraph company from denying service to a subscriber should be dissolved when the plaintiff fails to overcome evidence that information received by telegraph is being used and has been used for unlawful purposes, p. 40.

[May 9, 1940.]

MOTION *to dissolve preliminary injunction restraining telegraph company from denying leased wire service; injunction dissolved.*

APPEARANCES: Hammond, Hoyt & Rand, of Youngstown, Ohio, and Payer, Corrigan, Bleiweiss & Cook, of Cleveland, Ohio, for plaintiff; Harrington, Huxley & Smith, of Youngstown, Ohio, for defendant; E. B. Freed, United States Attorney, and Jerome N. Curtis, Assistant United States Attorney, both of Cleveland, Ohio, amicus curiæ.

WILKIN, D. J.: This cause came on for determination of the motion of the defendant (filed March 2, 1940) to dissolve the preliminary injunction granted February 26, 1940. At the presentation of the issue in open court on March 12, 1940, the United States attorney for the northern district of Ohio was granted leave to appear, amicus curiae, and participate in the argument. Thereafter, he requested an extension of time for presentation of affidavits. After such affidavits were filed, the plaintiff requested an extension of time to May 7th for the filing of additional affidavits.

After consideration of the pleadings, affidavits, arguments, and briefs, the court sustains the motion of the defendant and dissolves the preliminary injunction.

The petition was filed originally in the court of common pleas of Mahoning county, Ohio. The case was removed to this court upon petition of the defendant on the ground of diversity of citizenship. The petition alleges that the defendant is a public utility, and that the plaintiff is engaged in the business of receiving and distributing news for profit; that the defendant is furnishing the plaintiff with certain leased wires; that the service is such as the defendant offers and furnishes to the public generally; and that it is necessary to the plaintiff's business. The petition alleges, however, that the defendant, on the 17th day of February, 1940, notified the plaintiff that it intended to discontinue such service at the close of business February 23, 1940; and that the discontinuance of such service would occasion the plaintiff irreparable damage. It closed with prayer for a restraining order. A preliminary injunction was allowed, and a motion to dissolve was filed.

The reason assigned by the defendant for its determination to discontinue service was that the plaintiff was using such service for an illegal purpose. The affidavits filed by the defendant and by the United States Attorney tend to show:

That the plaintiff was formerly connected with the Annenberg associations and affiliates, which were engaged in obtaining information from race tracks and distributing it to bookmakers and gambling houses throughout the country; that one of the Annenberg agencies was known as Nationwide News Service, Inc., and that the plaintiff was manager of such agency at Youngstown, Ohio; that the Annenberg associations and agencies were investigated by the United States district attorney at Chicago; that, as a result of such investigations and prosecutions which followed, the United States attorney at Chicago notified the defendant in this case, together with other telegraph and telephone companies, that if such wire companies continued to give service to the Annenberg organizations they would be held to account for knowingly aiding, abetting, and conspiring in the

violation of state and Federal laws; that such companies thereupon notified the Annenberg organizations that service to them would be discontinued; that the Nationwide News Service, Inc., and other Annenberg organizations brought suit in the United States district court in Chicago to enjoin the wire companies from discontinuing service; that a preliminary injunction in such case was denied upon the ground that the business of the Annenberg organizations was almost entirely devoted to bookmakers and gamblers, and that, if the court were to issue an order restraining the discontinuance of such service by wire companies, it would, in effect facilitate the violation of laws of the state of Illinois; and that before final hearing in that suit, the attorneys for the Annenberg organizations withdrew their complaints and agreed to close and terminate the entire business.

The affidavits further tend to show:

That in spite of the assurances made in Chicago, a nationwide plan still exists and is in operation for the continuance of what is essentially the same service, i. e., the obtaining of information from race tracks and the distribution of such information through central clearing points to bookmakers and gamblers, and that the plaintiff in this suit is a participant in that plan. That many of the officers and employees of the present plan were formerly officers and employees of the Annenberg organizations. That as a result of the operation of such plan, information is still being gathered from race tracks and transmitted to bookmakers and gambling establishments for the purpose of making bets and paying off winners. That definite race track information was traced through the office of the plaintiff in Youngstown, Ohio, to eight or ten gambling places in and about Youngstown where bets were made.

The use made of such information at said gambling places was in violation of §§ 13054 and 13062, G. C. of Ohio.

[1, 2] The court is not required, in connection with this issue, to determine the truth or falsity of the allegations contained in the affidavits. If there is justification for the defendant's belief that the information transmitted to the plaintiff over its wires is being used for an illegal purpose, a court of equity will not restrain the defendant from discontinuing such service. The tariffs published by the defendant contain a provision preventing lessees of its wires from using its service to violate, directly or indirectly, any Federal or state law. Even without such provision in the tariffs, the defendant would not only be authorized, it would be obligated, to discontinue service which contributes to and facilitates the operation of a business or enterprise in violation of law. Any person or company that knowingly assists in a scheme to violate the law is subject to prosecution. A court of equity will not restrain the discontinuance of service by a utility if the character of the use of the service is such as to justify an honest doubt as to its legality. The service which a person has the right to demand of a public utility is service lawful in character.

[3] While the affidavits filed by the plaintiff denied any connection between the plaintiff's business at Youngstown and M. L. Annenberg or

Nationwide News Service, Inc., and while they tended to show that information other than race track information was also received over the leased wires, still the evidence as to the antecedence of the business at Youngstown, as to the former employment of the plaintiff, and as to the direct communication from plaintiff's office to the places in and about Youngstown definitely identified as bookmaking and gambling places, leaves little doubt as to the unlawful purpose of the plaintiff's business, and little doubt as to the main source of the income for which the business is operated.

The plaintiff's affidavits also tend to show that the information which it receives and transmits goes also to newspapers and is published by them. That part of the plaintiff's business is no doubt lawful. But it would appear from the affidavits that that is only a part of the business.

This court concurs in the decision in the case of the Nationwide News Service v. American Teleph. & Teleg. Co., Ilinois Bell Teleph. Co., and Western U. Teleg. Co.[1]; and the views expressed by Judge Wilson in the case of Nevans v. Southern California Teleph. Co. in the Superior Court of California, Los Angeles County, No. 447702, Judge Wilson said: "So far as the duty of a public service coporation to furnish service is concerned, it is not absolute. I think we all know that. It is subject to reasonable limitations generally, if necessary to public welfare and public order, at least, a public service corporation is not bound to furnish service to any one who has—who it has reason to believe will use the service for illegal purposes. To my mind there is no doubt about that."

In conclusion, this court can adopt the very words used by Judge Wilson in disposing of that case: "As I read the affidavits the burden has not been sustained by the plaintiffs to overcome the—well, it is not a presumption, but to overcome the evidence introduced here by the affidavits that the information is being used, and has been used for unlawful purposes. The temporary restraining order is dissolved and the application for a preliminary injunction is denied."

In this case the preliminary injunction is dissolved.

[1] No opinion for publication.

ARKANSAS SUPREME COURT

Department of Public Utilities et al.

v.

Arkansas Louisiana Gas Company

[No. 4-6026.]

(— Ark —, 142 SW(2d) 213.)

Appeal and review, § 37 — Scope of review — Commission orders.

1. The review of an order granting a certificate does not extend further than

to determine whether the Department has regularly pursued its authority, where there is no claim that the order violated any constitutional rights, p. 44.

Appeal and review, § 53 — Duty to affirm — Commission orders.

2. It is the duty of the appellate court to uphold an order granting a certificate to construct and operate a natural gas pipe line if it is supported by substantial evidence, free from fraud, and not arbitrary, even though the court may disagree with the wisdom of the order, p. 44.

Monopoly and competition, § 58 — Natural gas — Immunity from competition.

3. The transportation and distribution of natural gas is a business that should not be immune from competition, under certain conditions, rather than a regulated monopoly, p. 45.

Monopoly and competition, § 40 — Rates as a factor — Natural gas.

4. The fact that one is engaged in the business of producing or buying, transporting, and distributing natural gas should not alone eliminate him from competition from a new field of natural gas which might be discovered, produced, and sold to existing consumers at a much cheaper rate because of cost of production, proximity to the existing market, or a better grade of gas because of a higher BTU content, p. 45.

Certificates of convenience and necessity, § 104 — Gas — Test of public necessity — Cost.

5. The element of cost, although not necessarily of itself sufficient, is a very important one for the Department to consider in determining whether the public convenience and necessity will be served by granting a certificate to construct and operate a natural gas pipe line, p. 45.

[July 1, 1940.]

APPEAL *from judgment reversing Department order authorizing construction and operation of a natural gas pipe line; reversed and order reinstated.*

APPEARANCES: Thomas Fitzhugh and J. T. Hornor, Jr., both of Little Rock, E. F. McFaddin, of Hope, W. A. Delaney, Jr., of Ada, Okla., and W. T. Anglin and Vernon Roberts, both of Holdenville, Okla., for appellants; Moore, Burrow & Chowning, of Little Rock, and H. C. Walker, Jr., James B. Henderson, and Wm. C. Fitzhugh, all of Shreveport, La., for appellee.

McHANEY, J.: Appellants other than the Department of Public Utilities, hereinafter called the Department, and its Commissioners, are the Louisiana Nevada Transit Company, a corporation; the Hope Brick Works, owned by N. P. O'Neal; and the city of Hope, acting for its municipal water and light plant.

On March 20, 1939, the Louisiana Nevada Transit Company, hereinafter called the applicant, filed with the Department an application for a certificate of convenience and necessity to construct, maintain, and operate a natural gas pipe line from Cotton valley field in Webster parish, in northern Louisiana, to the Ideal Cement Company at Okay, Arkansas, a distance of about 75 miles. The basis of the appli-

cation was a contract with the Ideal Cement Company to supply it with natural gas for the manufacture of cement. Later applicant amended its application so as to be permitted to construct a branch from its proposed line to Okay to Hope so as to serve the municipal water and light plant and the Hope Brick Works, with whom it had contracted to furnish gas at 10 cents per thousand cubic feet the same rate it had agreed to furnish gas to the Ideal Cement Company. It also offered to serve the little towns of Bradley, Fulton, McNab, and Saratoga, on or near its proposed line, at 45 cents per thousand cubic feet with the approval of the Department.

On July 18, 1939, 30 PUR(NS) 40, on its previous petition so to do the Federal Power Commission granted to applicant a limited certificate of convenience and necessity to construct said gas pipe line from said Louisiana field to Okay and to Hope, Arkansas, over the protest and objections of appellee.

On July 28, 1939, appellee filed a petition to intervene in this action before the Department, which was granted. It alleged that it was a Delaware corporation doing business in the states of Arkansas, Louisiana, and Texas, with its principal operating office at Shreveport, Louisiana; that it owns and operates an integrated natural gas system, producing, transporting, and distributing natural gas through a pipe-line system of more than 1,500 miles of main line; that it serves 62 communities with approximately 44,000 customers in Arkansas, 23 communities with 28,000 customers in Louisiana, and 18 communities with 8,000 customers in Texas; that it also serves some industrial customers in said states from its main transmission line; that in 1938, it sold a total of 38,358,385 thousand cubic feet of gas of which 22,394,939 thousand cubic feet were sold in Arkansas; and its total system revenue for the same period was approximately $8,150,000 of which $4,856,000 came from Arkansas business. It further denied the allegations of the applicant and alleged that the construction of applicant's line is not a matter of public convenience and necessity and that the public interest would be adversely affected if the application is granted; that the loss of consumers applicant seeks to serve will increase domestic rates; that it will serve at the rate offered by applicant if the Department finds that it is fair and reasonable; and that it is able and willing to serve the territory. Interventions were also filed by the city of Hope and the Hope Brick Works in support of the application.

After a long and patient hearing comprising a record of 10 volumes of about 4,000 pages, the Department granted a certificate of public convenience and necessity to the applicant in accordance with its application, to sell natural gas to Ideal Cement Company at Okay, Arkansas, and to Hope Brick Works and the Hope Light and Water Plant at Hope, Arkansas; and directed applicant to file with the Department within sixty days a detailed survey of the towns of Saratoga, McNab, Fulton, and Bradley to determine the feasibility of serving these towns.

Thereafter, in apt time, appellee filed with the Department its petition for a rehearing which was denied, and it then filed in the Pulaski circuit court

its petition to review. On a trial before said court on the record made before the Department, the court vacated and set aside the order of the Department, from which is this appeal.

It is undisputed in this record that appellee has been serving the three customers, who have been wooed and won by applicant with cheap gas, for many years and that such service has been adequate and satisfactory with the exception of the price paid for gas, which, in each instance, is substantially higher than the rate of 10 cents offered by applicant.

The Department was created by Act 324 of the Acts of 1935, § 2065 et seq. Pope's Digest. It is a very comprehensive act of 71 sections, giving to the Department broad and comprehensive powers. It was established by the legislature to act for it and it has the same power the legislature would have, it acting within the power conferred by the act. It is given the power to regulate the service and rates of utilities under its jurisdiction. Before engaging in the utility business in this state or beginning any new construction, or extension therefor, application must be made to the Department for a certificate that the "public convenience and necessity require, or will require, such construction or operation." Section 2104, Pope's Dig. By § 2097(a) "any party to any proceeding before the Department upon rehearing may . . . file a petition in the circuit court of Pulaski county against the Department for the purpose of having the lawfulness of any of its final decisions or orders inquired into and determined. . . ." Subsection (d) provides: "Upon hearing the court may dismiss the petition to review or vacate the order complained of in whole or in part, as the case may be, but in case the order is wholly or partially vacated the court may also in its discretion remand the matter to the Department for further procedure not inconsistent with the judgment of the court as, in the opinion of the court, justice may require. The review shall not be extended further than to determine whether the Department has regularly pursued its authority, including a determination of whether the order or decision under review violated any rights of the complainant under the Constitution of the United States or of the state of Arkansas."

[1, 2] It is contended, and we think correctly, that since there is no claim by appellee that the order of the Department complained of violated any of its constitutional rights, the review of such order "shall not extend further than to determine whether the Department has regularly pursued its authority." But this does not mean that the courts cannot inquire beyond mere formality. If the courts may be resorted to by any party before the Department "for the purpose of having the lawfulness of any of its final decisions or orders inquired into and determined," as provided in § 2097(a) then the phrase in § 2097(d) "to determine whether the Department has regularly pursued its authority" must mean something more than an inquiry into the regularity of the proceedings before the Department. The proceedings before the Department might be regular in all respects, and still its order might be illegal and void as being arbitrary, unreasonable, without any substantial evidence to support it, or in

fraud or corruption. Jernigan v. Loid Rainwater Co. (1938) 196 Ark 251, 117 SW(2d) 18; Lion Oil Refining Co. v. Bailey (1940) — Ark —, 139 SW(2d) 683.

The duty devolved upon the Department in the first instance to determine, after notice and a hearing, whether the "public convenience and necessity require, or will require, such construction or operation." But, upon application to the courts for a review of this action, they may do so, as said in the Rainwater Case, *supra*, [196 Ark at p. 256, 117 SW(2d) 20], "to determine whether there has been an arbitrary decision, or an abuse of discretion, but we should regard and uphold the decision . . . unless it be made to appear that there was an abuse of discretion or an arbitrary decision." In other words, if the Department's order is supported by substantial evidence, free from fraud, and not arbitrary it is the duty of the courts to permit it to stand, even though they might disagree with the wisdom of the order. In such a case our judgment will not be substituted for that of the Department.

[3–5] The only other point in the case is whether the order of the Department is supported by substantial evidence, and we think it is. Certain facts are undisputed. Applicant has filed with the Department a certified copy of its articles of incorporation; copies of the contracts it has made with the three industrial consumers it proposes to serve; and has satisfied the Department of its financial responsibility and managerial ability, of the abundance and quality of its supply of natural gas. It has constructed its pipe line to Okay and is now serving the Ideal Cement Company. The city of Hope is, naturally, very much interested in the prospect of cheaper gas rates for its municipal light and water plant, as also the Hope Brick Works. There is a prospect, but not a certainty, that the cities of DeQueen, Horatio, Lockesburg, and Gillam, now wholly without natural gas, may be served by the applicant, as also the towns of Bradley, Fulton, McNab, and Saratoga. The order of the Department now under review requires the applicant to make a survey of the feasibility of rendering service to these latter towns and to report its findings to the Department for its action thereon, all of which applicant has offered to serve at a rate of 45 cents per thousand cubic feet. Then there is the fact of the offer to serve the three industrial consumers at a rate of 10 cents per thousand cubic feet. The average rate now charged the municipal plant in Hope by appellee is 15.30 per thousand cubic feet and the new rate will effect a savings of more than $6,000 per year, which may be passed back to its consumers of water and power as dividends in the form of reduced rates. The average rate paid by the Hope Brick Works over a period of several years is 17.35 per thousand cubic feet and it is estimated its saving will exceed $10,000 per year. The average rates for these three consumers for 1938 were: Ideal Cement Co. 14,2582 c, Hope Light and Water Plant 16.6812 c, and the Hope Brick Works 15.9808 c.

When we consider these and other facts in the record, we cannot say the Department abused the wide discretion given it or that its order was arbitrary and without evidence to sup-

port it. In this connection we think it proper to observe that the transportation and distribution of natural gas is a business that should not be immune from competition, under certain conditions, rather than a regulated monopoly. Natural gas is found beneath the earth's surface and it is the subject of discovery and capture, which fact brings into the business the element of hazard and risk. The fact that one is engaged in the business of producing or buying, transporting, and distributing same should not alone eliminate him from competition from a new field of natural gas which might be discovered, produced and sold to existing consumers at a much cheaper rate, because of cost of production, proximity to the existing market or a better grade of gas because of a higher BTU content. Therefore, the element of cost, although not necessarily of itself sufficient, is a very important one for the Department to consider in determining whether the public convenience and necessity will be served. Having done so on this and other grounds mentioned, we cannot say there was no substantial evidence to support the order. The trial court was of the opinion that, to permit this competition might adversely affect the 44,000 domestic consumers in Arkansas. We do not think this assumption was justified, because appellee offered to meet the rate.

We think it would be a work of supererogation to undertake to review and apply the principles of law announced in the many cases cited in the excellent briefs of learned counsel on both sides. Only two questions are here presented—one of law, whether the courts have any jurisdiction to review the order, and the other of fact, whether the order is supported by substantial evidence. Our conclusions as to both points, as stated above, necessarily result in a reversal of the judgment of the trial court, a dismissal of the action and a reinstatement of the order of the Department.

It is so *ordered*.

UNITED STATES CIRCUIT COURT OF APPEALS, TENTH CIRCUIT

Canadian River Gas Company et al.

v.

Federal Power Commission

[No. 1931.]

(113 F(2d) 1010.)

Appeal and review, § 8 — Orders reviewable — Determination of question — Later orders.

1. The question whether an order of the Federal Power Commission is reviewable must be determined under the facts existing at the time the petition

for review was filed, and the petition must not be considered as though the petitioners were seeking review of subsequent orders, p. 47.

Appeal and review, § 8 — Orders for investigation — Right to review.

2. An order of the Federal Power Commission finding that certain companies are natural gas companies within the meaning of the Natural Gas Act and that it is necessary and proper in the public interest and to aid in the enforcement of the act that an investigation be instituted by the Commission on its own motion into and concerning rates, charges, classifications, rules, regulations, practices, and contracts of such companies and ordering that an investigation be instituted, is a mere step in procedure and is not reviewable, p. 48.

[July 24, 1940.]

PETITION *to review order of Federal Power Commission; rehearing denied. For earlier opinion, see 110 F(2d) 350, 34 PUR(NS) 448.*

APPEARANCES: Elmer L. Brock, of Denver, Colo. (C. H. Keffer, H. L. Adkins, H. C. Pipkin, Wales H. Madden, and H. M. Adkins, all of Amarillo, Tex., P. C. Spencer, of New York city, Wm. L. Darrah, of Cody, Wyo., John P. Akolt, E. R. Campbell, and Milton Smith, all of Denver, Colo., and William A. Dougherty, of New York city, on the brief), for petitioners; Richard J. Connor, Assistant General Counsel, Federal Power Commission, of Washington, D. C. (David W. Robinson, Jr., General Counsel, Edward H. Lange, and W. A. Whittlesey, Attorneys, Federal Power Commission, all of Washington, D. C., on the brief), for respondent.

Before Phillips, Bratton, and Huxman, Circuit Judges.

PHILLIPS, C. J.: In this opinion Canadian River Gas Company will be referred to as the Canadian Company and the Colorado Interstate Gas Company as the Colorado Company; collectively, they will be referred to as the companies; and the Federal Power Commission will be referred to as the Commission.

[1] The order sought to be reviewed was entered March 14, 1939. The application of the companies for a rehearing was denied May 9, 1939. The petition for review was filed July 7, 1939. In the verified petition for rehearing our attention is directed to three orders made by the Commission, No. 63 entered September 6, 1939, No. 65 entered October 17, 1939, and No. 69 entered November 3, 1939, and it is stated that none of these orders has been vacated and none has been complied with by the companies. We are of the opinion that the question of whether the order of March 14, 1939, is reviewable must be determined under the facts existing at the time the petition for review was filed. The companies might have taken proper steps to have the subsequent orders reviewed and in those proceedings raised the jurisdictional question, but they may not in the present proceeding have their petition considered as though they were seeking review of the subsequent orders.

[2] We now turn to certain cases cited by counsel for the companies in their memorandum brief on rehearing, in support of their contention that the order of March 14, 1939, is reviewable. In Federal Power Commission v. Pacific Power & Light Co. (1939) 307 US 156, 83 L ed 1180, 28 PUR (NS) 93, 59 S Ct 766, the Inland Power & Light Company owned three hydroelectric projects in Oregon and Washington and the Pacific Company was engaged in generating and distributing electric energy in Oregon and Washington, and owned and operated facilities for interstate transportation of electricity. Section 203 (a) of the Federal Power Act, 16 USCA § 824b (a), provides that no public utility shall sell the whole of its facilities subject to the jurisdiction of the Commission, without first having secured an order of the Commission authorizing it so to do. The Inland and Pacific Companies filed a joint application with the Commission for approval, under §§ 8 and 203 of the Federal Power Act, 16 USCA §§ 801, 824b, of a proposed transfer of all the assets of Inland to Pacific, and of the termination of Inland's existence. Having found, after a full hearing, that the applicants had failed to establish that the transfer would be consistent with the public interest within the contemplation of § 203(a) of the Federal Power Act, the Commission ordered that the application be denied. The Commission did not merely find that it had jurisdiction to hear and determine the application, but it proceeded with the hearing, made its finding, and denied the application. In the instant case, the Commission merely made a preliminary finding of jurisdiction and ordered the institution of the proceeding to investigate the rates, charges, classifications, rules, regulations, practices, and contracts of the companies. It has made no final order in the proceeding.

Lehigh Valley R. Co. v. United States (1917) 243 US 412, 61 L ed 819, 37 S Ct 397, is discussed in Note 11 to the opinion in Rochester Teleph. Corp. v. United States (1939) 307 U S 125, 132 83 L ed 1147, 28 PUR (NS) 78, 59 S Ct 754, 758. That case arose under the Panama Canal Act, 37 Stat. 560, 566, 49 USCA § 5. The act prohibited, after July 1, 1914, any ownership by a railroad in any common carrier by water when the railroad might compete for traffic with the water carrier, and authorized the Interstate Commerce Commission to determine questions of fact as to such competition, and to extend the time beyond July 1, 1914, if the extension would not exclude or reduce competition on the water route. In January, 1914, the Lehigh Company filed a petition praying for a hearing as to whether the services of a steamboat line owned by it would be in violation of the act and for an extension of time. The Interstate Commerce Commission found, after a full hearing, that an extension and continuation of the existing services by water would prevent, exclude, and reduce competition on the Great Lakes, and entered its order denying the application. See Lake Line Applications under Panama Canal Act (1915) 33 Inters Com Rep 699, 716. Thereafter, it denied a petition for rehearing. 37 Inters Com Rep 77. The Lehigh Company then filed its bill in equity to enjoin the enforcement of the order. In that case,

the proceeding was prosecuted to final determination before the Interstate Commerce Commission, findings were made, and an order was entered denying an extension of time for compliance with the act by the Lehigh Company. We reiterate that, in the instant case, there was a mere preliminary finding of jurisdiction and no final order commanding or inhibiting any action on the part of the companies.

Section 402 of the Transportation Act, 1920, 41 Stat. 456, 477, 49 USCA § 1(18), prohibits any carrier by railroad subject to the act from undertaking any extension of its lines or construction of new lines, without first securing from the Interstate Commerce Commission a certificate of public convenience and necessity. Paragraph 22 of § 402, *supra,* exempts from the requirements of § 402, *supra,* street, suburban, or interurban electric railways, which are not operated as a part or parts of a general steam railroad system of transportation. In Piedmont & N. R. Co. v. United States (1930) 280 US 469, 74 L ed 551, 50 S Ct 192, the railway company filed an application for a certificate of public convenience and necessity to extend its lines and asserted therein that it was an interurban electric railway within the exemption of Par. 22 and moved that its application be dismissed for want of jurisdiction. The Interstate Commerce Commission overruled the motion, took jurisdiction, heard the application on the merits, found that present and future public convenience and necessity was not shown to require the extension of the lines and entered its order denying the application. Re Piedmont & N. R. Co. (1928) 138 Inters Com Rep 363, 401. The Piedmont Company then brought a suit in equity seeking a decree adjudging that the Interstate Commerce Commission was without jurisdiction and setting aside and annulling the order denying the application. Here, again, the action of the Interstate Commerce Commission was not challenged at the time it made its preliminary finding of jurisdiction, but not until it had heard the case on the merits and entered a final order denying the application.

It will be observed that in the Pacific Company Case, *supra,* an order had been entered denying approval of the application, which in effect commanded the Inland Company not to transfer its assets to the Pacific Company; that in the Lehigh Company Case, *supra,* an order had been entered denying an extension, which in effect commanded the Lehigh Company to discontinue ownership of its steamboat line; and in the Piedmont Company Case, *supra,* an order had been entered denying the application, which in effect commanded the Piedmont Company not to extend its lines.

In Valvoline Oil Co. v. United States (1939) 308 US 141, 84 L ed 151, 60 S Ct 160, Id. (1938) 25 F Supp 460, the Interstate Commerce Commission had issued a general order known as Valuation Order No. 26 requiring all pipe line companies subject to the Interstate Commerce Act, 49 USCA c. 1, § 1 et seq., to prepare and file with the Interstate Commerce Commission maps, charts, and schedules of their property not less than sixty days after written notice from the Interstate Commerce Commission. The Valvoline Company was served

with such notice in January, 1936. Whereupon it petitioned the Interstate Commerce Commission to determine its status, asserting that it was not subject to the act. After a hearing on the petition the Interstate Commerce Commission issued a report on February 2, 1937 (47 Inters Com Rep 534) holding that the Valvoline Company was engaged in the transportation of oil by pipe line in interstate commerce, that it was a common carrier subject to the provisions of the Interstate Commerce Act, and that it should, therefore, comply with Valuation Order No. 26. The Valvoline Company brought a proceeding to enjoin the order of the Interstate Commerce Commission. In that case, the Interstate Commerce Commission not only made its preliminary finding of jurisdiction, but ordered and directed compliance by the Valvoline Company with Valuation Order No. 26.

Section 19 of the Natural Gas Act, 15 USCA § 717r, provides that any person to a proceeding under this chapter aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the circuit court of appeals. Here, no order has been issued by the Commission other than one directing that the investigation proceedings be instituted. We do not think the act intends to permit a review of a mere procedural order directing that a proceeding be instituted. Such an order clearly falls within group one of Mr. Justice Frankfurter's classification. See Rochester Teleph. Corp. v. United States, *supra*, 307 US at p. 130. It is a mere interim step in the proceeding. We entertain no doubt that when the Commission makes an order pursuant to the Natural Gas Act commanding a company to do or refrain from doing something, it may seek a review of that order and therein raise the question of the jurisdiction of the Commission over the company. But that is not the case before us.

It is true that Order No. 51 of the Commission directed an investigation to determine what persons are natural gas companies within the meaning of the Natural Gas Act and it is urged that the finding in the order of March 14, 1939, was the culmination of that proceeding and in effect commands obedience by the companies with the provisions of the Natural Gas Act. We do not so regard the finding sought to be reviewed. It was made in the order of March 14, 1939, ordering an investigation. It was nothing more than a preliminary finding in a proceeding in which a definitive order has not yet been entered. As stated in our former opinion, 110 F(2d) 350, 352, 34 PUR(NS) 448, 452, "It is a mere step in procedure. It neither commands nor inhibits any action on the part of the companies."

Counsel for the companies urge that the question of jurisdiction by virtue of the challenged finding will become res judicata and that they will be estopped from challenging the Commission's jurisdiction in any proceeding to review a future order of the Commission. The attitude taken by the Commission in this proceeding and our decision precludes that eventuality.

The petition for rehearing is denied.

Re Standard Gas & Electric Company et al.

(File Nos. 54-24, 70-145, 70-157, Release Nos. 2262, 2307-2309, 2361.)

Intercorporate relations, § 19.7 — Corporate simplification — Exchange of securities.

1. A plan for the exchange of notes or debentures, issued by a holding company, for common stock of a subsidiary is in general in the public interest as furthering the ends of § 11(b) of the Holding Company Act and generally beneficial to security holders, but a finding of the Commission approving such a plan under § 11(e) of the act should not be construed by security holders as a recommendation that they deposit their notes and debentures for such exchange, as this is a matter for every security holder to decide for himself, p. 52.

Security issues, § 13.1 — Registration under Securities Act — Exchange of securities.

2. The exchange of notes and debentures of a holding company for common stock of a subsidiary as part of a plan for corporate simplification under § 11 of the Holding Company Act, in order to divest the holding company of such subsidiary, is exempt from the registration and prospectus requirements of the Securities Act of 1933 by virtue of § 3(a)(10) thereof, p. 58.

(HEALY, Commissioner, dissents.)

[August 22, 1940; September 27, 1940; October 29, 1940.]

APPLICATION *by registered holding company pursuant to § 11(e) of the Holding Company Act and declaration by subsidiary pursuant to §§ 6 and 7 of such act for approval of plan for exchange of securities; plan approved subject to conditions. Supplemental orders issued September 27, 1940. Date of expiration of exchange offer extended to November 24, 1940, by order dated October 29, 1940.*

APPEARANCES: David K. Kadane of the Public Utilities Division of the Commission; A. Louis Flynn and J. R. Clerkin, of Chicago, Illinois, for Standard Gas and Electric Company and San Diego Consolidated Gas & Electric Company; Abner Goldstone, of New York, N. Y., for Standard Gas and Electric Company.

By the COMMISSION: Standard Gas and Electric Company has filed a Plan under § 11 (e) of the Act, 15 USCA § 79k (e) regarding the disposition by it of the common stock it owns of San Diego Consolidated Gas & Electric Company to Standard's note and debenture holders,[1] after the stock has been reclassified in accordance with a

[1] Including holders of the 6 per cent gold debentures due February 1, 1957, issued by Standard Power and Light Corporation and assumed by Standard Gas.

declaration filed herein by San Diego. Hearings were held after appropriate public notice.

Standard is a registered holding company with subsidiary public utility companies operating in twenty-one states and in two provinces of the Republic of Mexico.

Standard Gas had outstanding the following securities, as of June 30, 1940:

6% Notes and debentures, of various maturities	$70,523,900
Prior preference stock, without par value:	Shares
$7 Cumulative	368,348
$6 Cumulative	100,000
$4 Cumulative preferred stock, without par value	757,442
Common stock without par value	2,162,607

As of June 30, 1940, accumulated unpaid dividends on the $7 cumulative prior preference stock were $16,630,912.20; on the $6 prior preference stock, $3,870,000; and (to May 31, 1940) on the $4 cumulative preferred stock $21,965,818. These dividend arrears aggregated nearly $42,500,000.

The Plan

[1] One of the subsidiaries of Standard Gas is San Diego Consolidated Gas & Electric Company, which operates electric and gas properties in and around San Diego, California. Standard Gas owns 99,387 shares of the par value of $100 per share [2] constituting 99.07 per cent of the outstanding common stock of San Diego. The plan provides, in substance, that a holder of notes or debentures of Standard Gas may offer to exchange each $1,000 principal amount of such notes or debentures for 58 shares of reclassified common stock of San Diego, of the par value of $10 each. Holdings of less than $1,000 principal amount of notes and debentures may be exchanged on the same proportionate basis, but no fractional shares will be issued. Any dealer securing deposits will be paid 1 per cent of the principal amount of the notes and debentures attributable to him.

If all of the San Diego stock owned by Standard (except 11 of the reclassified shares) is exchanged in this manner, Standard would acquire $17,135,500 principal amount of its notes and debentures, or about 24 per cent thereof. The plan is not to become effective until at least $14,321,500 principal amount of notes and debentures are deposited; Standard may, however, at its election declare the plan effective when the holders of not less than $8,567,750 principal amount of notes and debentures (or 50 per cent) shall have deposited.

The offer is to expire when all the San Diego stock has been exchanged or on September 30, 1940, whichever is earlier, except that this date may, at the option of Standard Gas, be extended, subject to our approval.

The management of Standard Gas has stated that it believes the funded debt of Standard to be excessive, and also that it has given consideration to a variety of ways of disposing of the San Diego stock. As it would accomplish the dual purpose of reducing the debt and disposing of the stock the management has adopted the Exchange plan before us.

In general, we consider plans of this type to be in the public interest. They

[2] San Diego has filed a declaration regarding reclassification of each share of its present common stock into 10 shares of common stock of the par value of $10 each.

further the ends of § 11 (b) of the Holding Company Act, and are generally beneficial to security holders. However, it is difficult to determine the proper basis of an exchange of this type; and it is difficult for a security holder to decide whether he should accept the plan. Under § 11 (e) of the act, before the plan is promulgated, we must find that it is fair and equitable to the persons affected by it. We so find with regard to this plan, but our finding should not be construed by security holders as a recommendation that they deposit their notes and debentures. That is a matter which every security holder must decide for himself in view of his own personal requirements.[3]

Standard Gas and § 11 (b) of the Act

On March 6, 1940, we commenced proceedings against Standard Gas and Electric Company and its subsidiaries to require compliance with § 11 (b) (1) of the Holding Company Act. This section requires, in substance, that each holding company system must confine its operations to a single integrated public utility system, businesses reasonably incidental or economically necessary or appropriate thereto, and to additional integrated public utility systems only if the Commission makes certain findings with respect to them. On June 14, 1940, Standard Gas filed an answer in said proceedings, in which it proposed an integration program which provided, in substance, that it would limit its operations to the Minnesota-Wisconsin properties and to the properties in and around Pittsburgh, Pennsylvania. Standard Gas proposes to divest itself of the balance of its subsidiaries. As a first step in disposal of its Pacific coast subsidiaries, as well as of its investment in Pacific Gas and Electric Company common stock, this plan was filed, commencing Standard's integration program. The consummation of these proposals would materially reduce the funded debt of Standard, and may eventually even eliminate it.

The top-heaviness of the structure of Standard is apparent from the figures we have mentioned. This plan, involving a reduction of the funded debt of Standard, is a step in conformity with objectives of § 11 (b) (2) of the act. See also § 7 (c) (1), 15 USCA § 79g (c) (1).

Section 11 (e) of the act provides, in substance, that a registered holding company may submit a plan to the Commission for the divestment of control, securities, or other assets to comply with the provisions of § 11 (b), and the Commission is obliged to approve such plan if it finds that the plan is necessary to effectuate the provisions of § 11 (b) and is fair and equitable to the persons affected.

As we have stated, Standard Gas proposes to confine its operations to the Minnesota-Wisconsin properties and to Pittsburgh. The San Diego properties may, therefore, under the Standard Gas program not be retained. Accordingly, we find that the plan is "necessary to effectuate the provisions of subsection (b)" of § 11. We are not to be understood as approving or disapproving the integration plan filed

[3] The common stock of San Diego and the notes and debentures of Standard Gas are sufficiently dissimilar and are consequently subject to such dissimilar market influences that the future market values of those securities are not likely to run a parallel course.

by Standard Gas in its above mentioned answer in the § 11 (b) (1) proceedings.

Fairness of the Plan to Persons Affected Thereby

Three classes of security holders are affected by this plan: (1) the note and debenture holders who accept the plan; (2) the note and debenture holders who do not accept the plan; and (3) the stockholders of Standard Gas.

Analysis of the fairness of the plan to these classes necessitates a study of the nature of the present interest of the security holders and of their interest if the plan is consummated, as well as a review by us of the details of the plan and the means chosen to effectuate it.

Assets and Earning Power of Standard Gas

There are some grounds for believing that the fair value of the assets of Standard Gas may be in excess of the principal amount of the company's funded debt.[4]

The total income of Standard Gas for the twelve months ended June 30, 1940, from dividends and interest was $5,901,519, according to a statement filed by Standard Gas. The expenses of Standard Gas were $594,067.64, leaving a gross income for the period of $5,307,451.36. In those twelve months Standard Gas paid interest on its notes and debentures in the amount of $4,257,405.95, and all income deductions, including this sum, other interest, taxes on interest paid and amortization of debt discount and expense aggregated $4,398,981.83, leaving a net income for the period in the amount of $908,469.53. Interest on funded debt was thus covered 1.25 times, and all fixed charges were covered 1.21 times.

For the twelve months ended June 30, 1940, the consolidated net income of Standard Gas and its subsidiaries consolidated before deduction of income charges of Standard Gas was reported to be $9,196,629.65. The income charges of Standard Gas were reported to be $4,398,981.83 (covered 2.09 times); thus leaving consolidated net income of $4,797,647.82, an increase of $1,480,000 over the calendar year 1939. The net income of Standard Gas alone for the twelve months ended June 30, 1940, was reported to be $908,469.53 which means that $3,889,178.29 of Standard's equity in subsidiaries' income for that period was not distributed to Standard Gas as dividends. Standard Gas claims that the difference between consolidated and corporate net income was not distributed because of (1) the necessity of certain subsidiaries conserving cash for other purposes; (2) arrearages on preferred stocks, in some cases; and (3) certain surplus restric-

[4] The actual balance sheet of Standard Gas at June 30, 1940, shows total investments at $296,968,464.02 less a reserve for investments of $119,374,681.19 which leaves $177,593,782.83 as the net book value thereof. The following is a quotation in part from Note B to the balance sheet.

"Neither the ledger values of these investments nor the remainder thereof after deducting the reserve for investments are stated to represent either present worth, realizable values, cost, or the company's equity in the book value of net assets of subsidiaries as shown by their books."

We are not now in a position to pass definitely upon the adequacy of the reserve for investments. We have grave doubts whether the reserve is adquate.

tions imposed by regulatory authorities.

Approximately 43 per cent of the total income of Standard Gas for the twelve months ended June 30, 1940, was derived from dividends on the common stock of Philadelphia Company.[5] Oklahoma Gas and Electric Company contributed 20 per cent, San Diego 13 per cent, and Louisville Gas and Electric Company (Delaware) and Wisconsin Public Service Corporation each 5 per cent. The record shows that since March 31, 1940, the common stocks of Wisconsin Public Service Corporation and of Mountain States Power Company have been placed on a dividend basis. The dividend arrears on the preferred stocks of the California Oregon Power Company have been substantially reduced since December 31, 1938.

Assets and Earning Power of San Diego

The capital structure of San Diego consists of $15,500,000 of first mortgage 4 per cent bonds due in 1965; $6,292,500 of 7 per cent cumulative preferred stocks; and $10,032,500 of common stock. As of June 30, 1940, San Diego showed an earned surplus of $2,682,105.62 so that the book equity per share (after the reclassification) is $12.67.[6] The bonds therefore amounted to 44.9 per cent of the capitalization including the earned surplus, and the preferred stock to 18.2 per cent and common stock and surplus to 36.9 per cent. As of June 30, 1940, the depreciation reserve of San Diego was $10,313,397.16 constituting 23.5 per cent of its utility plant ($43,914,498.96), including according to the applicants, $1,328,-243.63 of intangibles.

For the twelve months ended June 30, 1940, the earnings on the common stock of San Diego were approximately $1,047,000, the average for the three years ended December 31, 1939, having been $938,000. After the reclassification of the common stock these earnings correspond to $1.04 and 93 cents per share respectively. During this period, San Diego has paid $802,600 per annum in dividends on its common stock equivalent to 80 cents per share after the reclassification.

For the twelve months ended June 30, 1940, the operating revenues of San Diego totaled $8,842,745.45, of which $2,072,526.89 or 23.4 per cent was expended for maintenance and repairs, and appropriated for depreciation. The depreciation appropriation alone for this period was $1,379,-851.40 or 15.6 per cent of total operating revenues, and 3.1 per cent of

[5] See Re Philadelphia Co. Holding Company Act Release No. 1905, January 30, 1940, 33 PUR(NS) 43. We called attention, in our findings in that case, to the possibility that Philadelphia Company might have to make provision for losses on its traction investments in excess of the provisions therein made. However, in the twelve months ended June 30, 1940, Standard's equity in the consolidated net income of Philadelphia Company and its subsidiaries consolidated was about $2,000,000 in excess of the dividends received by Standard from Philadelphia Company.

[6] We do not pass upon certain questionable items included in property, plant and equipment and intangibles in the respective amounts of $1,219,000 and $1,259,548.96, aggregating $2,478,548.96. A witness for applicants testified that the California Railroad Commission has excluded them from the rate base. Excluding the questionable items included in utility plant as well as $321,000 of discount and expense applicable to preferred stock which has been retired and which is carried under assets by San Diego, the book equity would be about $9.88 per share of the reclassified common stock.

utility plant. These percentages are substantially higher than is generally the case in the industry.

The Railroad Commission of the state of California, in reviewing the company's rates for the year 1939 used an average undepreciated rate base of $40,719,473. This figure included an allowance of $811,000 for materials and supplies and cash working capital. At approximately annual intervals informal discussions have been had by the company, the California Commission and the city of San Diego as a result of which several rate reductions in various amounts have been made by mutual agreement.

It is quite possible that the bonds and preferred stock of San Diego may be refunded.[7] Standard estimates that the savings thereon may be from $150,000 to $200,000 a year, or 15 cents to 20 cents per share of common stock (after the reclassification).

Calculating the purchase price of San Diego on the basis of the approximate current market price of the notes and debentures (70), the holders of the notes and debentures may be said to be paying $12.07 per share for the stock, which is 11.61 times earnings and (on the basis of the present 80-cent dividend) indicates a yield of 6.63 per cent. Giving effect to the estimated minimum savings of 15 cents per share from the contemplated refinancing, the San Diego earnings for the twelve months ended June 30, 1940, would be increased from $1.04 per share to $1.19 per share, and the price of $12.07 per share of stock would be 10.14 times the revised earnings. A witness for the applicant testified that when San Diego's refinancing is consummated the board of directors of the company have stated that they plan to increase the annual dividend rate from 80 cents to 90 cents per share, which would increase the yield from 6.63 per cent to 7.46 per cent. In this connection it must be remembered that San Diego is a regulated public utility company, whose rates are under the jurisdiction of the California Railroad Commission.

Fairness to Those Who Accept the Offer

Holders of Standard Gas debentures and notes have a claim against the assets of the company measured by the face amount of such securities but under present market conditions cannot realize the full amount of their claims. There is of course no assurance that the notes and debentures will ever sell at 100 in the market. We have reviewed the history of the market prices of the notes and debentures, and observe that their present quotations are substantially less than 100 (having been so since 1931) and that if a security holder presently wishes to dispose of his debentures and notes he can do so only at a substantial discount from their face amount.

The holder of a $1,000 note or debenture of Standard Gas receives $60 a year in interest, and his security is currently quoted on the New York Curb Exchange at approximately 70 or $700 per bond. The market price has fluctuated thus far this year between $48 and $74.50. Acceptance of

[7] A witness for the applicants testified that a contract has already been signed for a refunding of the bonds; $16,000,000 of 3¾ per cent bonds would be issued, at a cost to the company of approximately 3 per cent to maturity.

the exchange offer would (if the Plan is consummated) give such holder 58 shares of reclassified common stock of San Diego. On the basis of the past dividend record of San Diego, this stock would yield $46.40 per annum, and earnings for the year ended June 30, 1940, aggregated $60.32. Although on the basis of the recent dividend record of San Diego, the income of the note or debenture holder accepting the offer would be somewhat reduced, it is observed that the current earnings of the 58 shares of San Diego stock would very nearly approximate his debenture interest. Furthermore, when the senior securities of San Diego are refunded, if the applicant's estimate of savings in the minimum amount of 15 cents per share of common stock is realized, the earnings on 58 shares of San Diego stock would be $69.02. Of course, the excess of earnings over dividends paid remains with the company and accrues to the benefit of the stockholder.

Moreover, a note or debenture holder accepting the offer would no longer own a note or debenture of a holding company, interest on which was being paid out of dividends derived principally from the common stocks of corporations which in turn are holding companies. Instead, he would be much closer to the source of income and would own common stock of an operating utility company in sound financial condition comparable in quality to operating company common stocks selling on yield bases considerably lower than the yield to maturity, at current market prices, of the notes and debentures. Furthermore, he would be in a position to enjoy any improvements in earnings and dividends.

We have seen in other instances that there has been a demand on the part of investors for operating company common stocks when such stocks were distributed to the public. In view of the investment quality of the San Diego stock it appears probable that such a demand should exist for it.

We find that it is fair to make the offer provided for in the plan, and that the plan is fair to any security holders who accept it.

Fairness to Those Who do not Accept the Offer

Inasmuch as Standard Gas, if the maximum amount of San Diego stock is exchanged, would reduce its funded debt by $17,135,500 and its fixed charges by $1,062,130, whereas the income of Standard Gas would be reduced (after the provision for estimated taxes) by only $803,087.20, the margin of interest coverage on the notes and debentures which are not exchanged would be somewhat improved. On a consolidated basis the reduction in fixed charges approximates the reduction in income before any savings due to the refunding, as Standard's equity in the undistributed net income of San Diego for the year ended June 30, 1940 is about $242,000. Thus the distribution of the San Diego stock pursuant to the terms of the plan will not be to the detriment of those who have not deposited.[8]

Fairness to Stockholders of Standard Gas

The plan is not detrimental to the

[8] Of course, if the plan is not consummated, any increase in dividends on San Diego stock would go to Standard.

Standard Gas stockholders because the debt of Standard Gas would be reduced by $17,135,500 if the maximum amount of stock is exchanged, whereas it does not appear probable that if the San Diego stock were sold for cash, notes and debentures could be purchased in that amount. The San Diego stock is carried on the books of Standard at $11,443,762.28.[9] Moreover, as we have seen, the net income of Standard Gas would be improved.

We find, therefore, that the plan is fair and equitable to the persons affected by it and accordingly an order will be entered approving the plan under § 11 (e) and permitting San Diego's declaration to become effective.

Section 11 (g) of the act requires that any solicitation of a consent or deposit in respect of a plan under § 11 for the divestment of control, securities, or other assets must be accompanied or preceded by a copy of a report on the plan made by this Commission or by an abstract thereof. This document shall be considered as the report on this plan, as well as the findings thereon.

We have here presented only a brief summary of the plan. Security holders should refer to the copy of the plan sent them for a full statement of its terms and for more detailed information as to the situation of Standard and San Diego. Attention is also called to the solicitation letter sent to the security holders by Standard.

[2] We are of the opinion that the transactions are exempt from the registration and prospectus requirements of the Securities Act of 1933 by virtue of § 3 (a) (10) thereof.

By the Commission, Chairman Frank and Commissioner Healy, who read and approved an earlier draft of the findings and report but were not present at discussion of the final draft, concurring in the result.

ORDER

An application having been filed by Standard Gas and Electric Company pursuant to § 11 (e) of the Public Utility Holding Company Act of 1935, and a declaration having been filed by San Diego Consolidated Gas & Electric Company pursuant to §§ 6 and 7 of said act, 15 USCA §§ 79f, 79g, for approval by the Commission of a plan pursuant to which holders of notes and debentures of Standard Gas and Electric Company would be permitted under certain circumstances to exchange said notes and debentures for common stock of San Diego Consolidated Gas & Electric Company (as more particularly set forth in said application) after such common stock has been reclassified pursuant to the said declaration:

Public hearings having been held thereon after appropriate notice, and the Commission, after duly considering the record, having made and filed its findings and report thereon:

It is *ordered* that said plan be and it hereby is approved as necessary to effectuate the provisions of § 11 (b) of the act, 15 USCA § 79k (b), and fair and equitable to the persons affected thereby provided, and subject to the following conditions:

(1) That the period of deposit will

[9] The book profit of approximately $5,400,000 (without giving effect to the expenses and taxes in connection with the proposed transactions) will be used to increase the reserve for investments.

not be extended without the approval of this Commission;

(2) That when all expenses incurred in connection with the transactions concerned with the application shall be actually paid, the applicant shall file a detailed statement of such expenses showing the names of persons or entities to whom such payments were made, the amounts of such payments, the amounts charged and a detailed description of the services rendered for which such payments were made.

It is *further ordered* that said declaration be and it hereby is permitted to become effective; and

It is *further ordered* that said report be and it hereby is adopted as the report made by the Commission herein pursuant to Section 11 (g) of said act.

Supplemental Order

The above-named party having filed an application pursuant to the Public Utility Holding Company Act of 1935, particularly § 6 (b) thereof for exemption from the provisions of § 6 (a) of the act of the issuance and sale of $16,000,000 principal amount of its first mortgage bonds, 3⅜ per cent series, due July 1, 1970, to the Equitable Assurance Society of the United States; and

Said application having been filed on August 26, 1940, and amendments thereto having been filed on September 18, 1940, and on September 27, 1940, respectively, and notice of said filing having been duly given in the form and manner prescribed by Rule U-8 promulgated under said act, and the Commission not having received a request for a hearing with respect to said application within the period specified in said notice, or otherwise, and not having ordered a hearing thereon; and the above-named party having requested that said application, as amended, be granted on the earliest possible date after the filing of the last amendment; and

This Commission deeming it appropriate in the public interest and in the interest of investors and consumers to grant said application, as amended, and finding in respect thereto under § 6 (b) of the act that the requirements of § 6 (b) of the act are satisfied; and

This Commission being satisfied that the date of granting the application, as amended, should be advanced;

It is hereby *ordered* pursuant to said Rule U-8 and the applicable provisions of the act, that the aforesaid application, as amended, be and the same is hereby granted forthwith; subject, however, to the terms and conditions prescribed in Rule U-9 promulgated under the act; provided, however, if any regulatory body having jurisdiction in the premises requires the above named party to dispose of its unamortized debt discount, premium, and expense in a manner other than that proposed in the application, as amended, the above-named party may carry out such requirements without further order of, or the taking of any action by this Commission.

Commissioner Healy dissenting for the reason stated in his memorandum of April 1, 1940.

Supplemental Order

The above-named party, a direct subsidiary of Standard Gas and Elec-

tric Company, a registered holding company, having filed (1) an application pursuant to § 6 (b) of the Public Utility Holding Company Act of 1935 for an exemption from the provisions of § 6 (a) of the act of the issuance and sale by said party of 314, 325 shares of its cumulative preferred stock, 5 per cent series, $20 par value; and (2) a declaration pursuant to Rule U-12C-1 promulgated under the act with respect to the acquisition and retirement by said party of 62,925 shares of its 7 per cent cumulative preferred stock, $100 par value, now outstanding; and

The application and declaration having been filed on September 17, 1940, and an amendment thereto having been filed on September 27, 1940, and notice of said filing having been duly given in the form and manner prescribed by Rule U-8 promulgated under the act, and the Commission not having received a request for a hearing with respect to the application and declaration within the period specified in said notice, or otherwise, and not having ordered a hearing thereon; and said party having requested that the application, as amended, be granted and the declaration, as amended, become effective on the earliest possible date after the filing of the amendment; and

This Commission deeming it appropriate in the public interest and in the interest of investors and consumers (1) to grant the application, as amended, pursuant to § 6 (b) of the act and finding with respect thereto that the issuance and sale of said securities are solely for the purpose of financing the business of said party and have been expressly authorized by the Railroad Commission of the state of California, in which state said party is organized and doing business; and (2) to permit the declaration, as amended, pursuant to Rule U-12C-1 under the act to become effective and finding with respect thereto that said party's financial integrity will not be adversely affected nor its working capital impaired for practical purposes; and

This Commission being satisfied that the effective date of the declaration, as amended, and that the date of granting the application, as amended, should be advanced:

It is hereby *ordered*, pursuant to said Rule U-8 and the applicable provisions of the act, that the aforesaid application, as amended, be and the same is hereby granted and that the aforesaid declaration, as amended, be and the same is hereby permitted to become effective forthwith; subject, however, to the terms and conditions prescribed in Rule U-9 promulgated under the act; provided, however, if any regulatory body having jurisdiction in the premises requires said party to dispose of the call premium of its 7 per cent cumulative preferred stock in a manner other than that proposed in the application, as amended, said party may carry out such requirement without further order of, or the taking of any action by this Commission.

Commissioner Healy dissenting for the reason stated in his Memorandum of April 1, 1940.

Supplemental Order

This Commission having heretofore under date of August 22, 1940, duly entered an order subject to certain conditions contained therein in the above

entitled proceedings approving an application pursuant to § 11 (e) of the Public Utility Holding Company Act of 1935 and permitting a declaration to become effective pursuant to §§ 6 and 7 of said act with respect to a plan pursuant to which holders of notes and debentures of Standard Gas and Electric Company would be permitted under certain circumstances to exchange said notes and debentures for common stock of San Diego Consolidated Gas & Electric Company (the name of which has since been changed to San Diego Gas and Electric Company);

Said order providing among other things that the period of deposit set forth in said plan should not be extended without the approval of this Commission;

Whereas, Standard Gas and Electric Company has requested that it be permitted to extend to October 31, 1940, the date, namely, September 30, 1940, heretofore fixed by said plan for the expiration of the offer of exchange described in said plan;

The Commission deeming it appropriate in the public interest and in the interest of investors and consumers to now permit said date to be extended as requested;

It is *ordered* that the date for the expiration of the offer of exchange as set forth in said plan as heretofore approved by the Commission in its order of August 22, 1940, be and hereby is permitted to be extended to October 31, 1940.

Order Approving Extension of Expiration Date

An order having been entered by the Commission on August 22, 1940, inter alia approving a plan filed by Standard Gas and Electric Company pursuant to § 11 (e) of the Public Utility Holding Company Act of 1935;

A further order having been entered on September 27, 1940, approving the extension from September 30, 1940, to October 31, 1940 of the date of expiration of the certain offer of exchange set forth in said plan;

A petition having been filed on October 26, 1940, by Standard Gas and Electric Company for approval of the extension of said expiration date to November 30, 1940;

The Commission deeming such extension fair and equitable to the persons affected thereby;

It is *ordered* that the postponement of the said expiration date to November 30, 1940, be and it hereby is approved.

MARYLAND CIRCUIT COURT, NO. 2 OF BALTIMORE CITY

Howard Sports Daily, Incorporated

v.

O. E. Weller et al.

Service, § 134 — Grounds for denial — Illegal use — Telegraph service.

1. A telegraph company should not be required to furnish special service to a person whose main, if not sole, business is to furnish information of such nature, and to furnish it in such manner that the recipients of the information might use it for an illegal purpose, p. 62.

Injunction, § 32 — Against service denial — Illegal use of service.

2. The extraordinary powers of a court of equity should not be exercised in furtherance of an illegal purpose by compelling the continuance of special telegraph service to one who furnishes information to be used for an illegal purpose, p. 62.

[September 27, 1940.]

REVIEW *of Commission order adverse to one who seeks to compel continuance of special telegraph service; Commission order affirmed.*

ULMAN, J.:

[1, 2] The Public Service Commission rests its order in this case upon a finding of lack of public necessity or convenience. This finding must be disregarded because the statutory jurisdiction in this respect is in terms applicable only to entry into a field of activity or to abandonment thereof. Nevertheless, the court will affirm the decision of the Public Service Commission upon other grounds. These may be stated briefly:

1. The special service heretofore furnished by the Western Union Telegraph Company to appellant was so far sui generis that no question of unreasonable discrimination between appellant and others is presented.

2. In its practical and legal effect, a reversal of the decision of the Public Service Commission would amount to a mandatory injunction requiring the Western Union Telegraph Company to supply said special service to appellant. Therefore this appeal must be tested not only by the familiar rules giving validity to decisions of the Public Service Commission unless they are unreasonable, unlawful, and not based upon substantial evidence, but also by the principles that govern a court of equity in granting such an injunction. Of primary importance is the rule that plaintiff must come into court with clean hands.

3. The record shows conclusively that appellant's main if not sole busi-

ness at the time of the hearing before the Public Service Commission was to furnish information of such nature and to furnish it in such manner that the recipients of such information might use it for an illegal purpose. Further, it is clear that appellant must have known this unless wilfully ignorant of it. It seems obvious that the extraordinary powers of a court of equity should not be exercised in furtherance of such a purpose.

4. Appellant, however, contends with great vigor that its activities in gathering and disseminating news of sports is an exercise of the freedom of the press which cannot constitutionally be restricted even though such news is devoted to illegal purposes in which appellant is not a participant. Appellant cites certain decisions from the courts of Florida and Kentucky supporting this view. As against these, counsel for Western Union Telegraph Company cite the following recent decisions of U. S. district courts, the reasoning of which is conclusive to this court in the instant case, viz.:

Partnoy v. Western U. Teleg. Co. No. 540 in the district court of the United States for the western district of Missouri, western division; Hamilton v. Western U. Teleg. Co. Civil No. 20221 in the district court of the United States for the northern district of Ohio, eastern division (1940) 34 F Supp 928, 36 PUR(NS) —; Fogarty v. Southern Bell Teleph. & Teleg. Co. District court, eastern district of Louisiana, New Orleans division, August 14, 1940, 34 F Supp 251, 35 PUR (NS) 296.

The order of the Public Service Commission is affirmed.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission

v.

Penelec Water Company

[Complaint Docket No. 11571.]

Rates, § 645 — Scope of proceeding — On reconsideration — Fire protection charges.

On a petition by a municipality for reconsideration of an order terminating a Commission investigation of water rates, the Commission should not determine the issues raised by the municipality's petition that the company be required to file a new schedule of rates for fire protection to permit the municipality to ascertain whether it wishes to enter a new contract for fire protection service, where the record does not disclose that present rates are

unreasonable and the petition does not allege the rates to be unreasonable in themselves, but states that the municipality is not in position to pay the rates.

[July 29, 1940.]

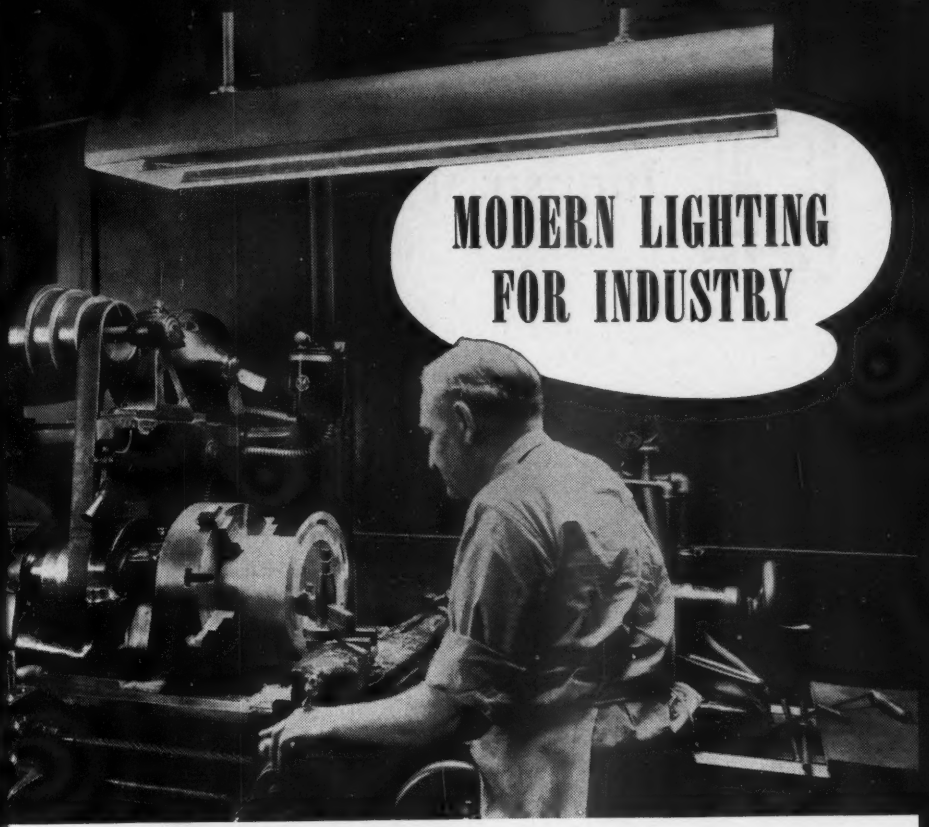
PETITION *for reconsideration in rate proceeding; petition dismissed.*

By the COMMISSION: This matter is now before us upon petition of the borough of Seward for reconsideration of our order of July 1, 1940, terminating the instant proceeding. The prayer of the petition is that "Penelec Water Company be required to file a new schedule of rates for fire protection for the borough of Seward to permit the borough to ascertain whether it wishes to enter into a new contract for fire protection."

The tariff of Penelec Water Company now contains a schedule of rates for fire protection and the record does not disclose the rates to be unreasonable. Furthermore, the petition now before us does not allege the rates to be unreasonable in themselves, but states that the borough is not in a position to pay the rates.

It is our opinion that the issues raised by the petition for reconsideration should not be determined in the present proceeding and do not require reconsideration of our termination order. The issues may more properly be made the subject of negotiations between the borough of Seward and respondent company or be raised in a separate proceeding directed solely to determination of a proper solution for the fire protection situation in the Borough of Seward; therefore,

Now, to wit, July 29, 1940, it is *ordered:* That the petition of the borough of Seward for reconsideration be and is hereby dismissed.



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Westinghouse to Insulate Major Transmission Line

RECEIPT of an unusually large order amounting to almost $70,000, for 45,000 ten-inch porcelain insulators, is announced by the Porcelain Division of the Westinghouse Electric & Manufacturing Company. The wet process porcelain units are to be used on a major interconnection transmission line now under construction to provide three-phase power interconnection between the Montana Power Company, Utah Power & Light Company, and the Idaho Power Company, and will further insure ample power supply facilities for National Defense power requirements in the inter-mountain area. These three utility properties are in the Electric Bond & Share system.

The new transmission line boasts several unusual features. The line will be used to interchange blocks of power and energy to pool effectively the power resources of the systems which are affected by the water supplies of several rivers and watersheds. Through such use the prime capacity of the interconnected systems will be increased to take care of possible extraordinary defense loads and drought conditions, as well as for increased power supply and other normal operation of the integrated systems. The three companies, together with consultants of Ebasco Services Incorporated, jointly designed, engineered, and are now constructing the interconnecting line in accordance with the standards of design thus reached.

San Diego Utility to Expand

SAN Diego's aircraft and national defense base expansion will require a $6,000,000 increase in service equipment of the San Diego Gas & Electric Co., William F. Raber, president, reported recently.

Largest in the company's history, the proposed development will include increasing output of the main generating plant in downtown San Diego, enlarging capacity of the concern's inter-connection facilities at Escondido with the Nevada-California Corp. system, and erection of a new 35,000-kilowatt power plant in the South Bay district.

Electric resources will be doubled on completion of this project and a new 132,000-volt transmission line, already under construction, to link the local system with Hoover Dam through the Southern California Edison Co., Mr. Raber said.

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DOWNERS GROVE, ILL.
Manufacturers of
Pole Line Construction Tools
They're Built for Hard Work

Hygrade Announces Improved Fluorescent Lamp Starter

HYGRADE Sylvania Corporation, Salem, Mass., announces a new and improved fluorescent lamp starter (the "Mirastat"), made available to the trade in three sizes. Mirastat No. 2 is designed for use with 15 and 20 watt fluorescent lamps; Mirastat No. 4 is designed for use with 30 and 40 watt lamps; and Mirastat No. 6 is designed for use with 100 watt lamps.

All Miralumes are now being equipped with this new starter, and Hygrade is making them available for general distribution through jobbing channels.

Improvements claimed for this patented starter include elimination of "sputtering," due to proper preheating of lamp cathodes; retardment of blackening at the end of lamps; longer lamp life; and definite, accurately-timed starting and re-starting.

Wattage consumed by Mirastats is only approximately ½ watt.

Mirastats are approved by the Underwriters' Laboratories. The Mirastat operates with fluorescent lamps on either direct or alternating current. The starter circuit includes a condenser designed to minimize radio interference. Compensation is made for temperature, so that starter operates satisfactorily over a wide range of surrounding temperature conditions. The Mirastat is interchangeable with glow relay types of starters as it uses the same type of socket. Unusual sturdiness is also claimed for this new type starter.

Velocity Power Gauge Tester

THE new M. S. A. Velocity Power Gauge Tester has been announced by Mine Safety Appliances Co., Pittsburgh, Pa. This addition to the M. S. A. line of Velocity Power Tools is a unique device designed for safely testing gauges used in conjunction with compressed gas storage cylinders, to determine their ability to withstand sudden applications of surge pressure encountered under service conditions.

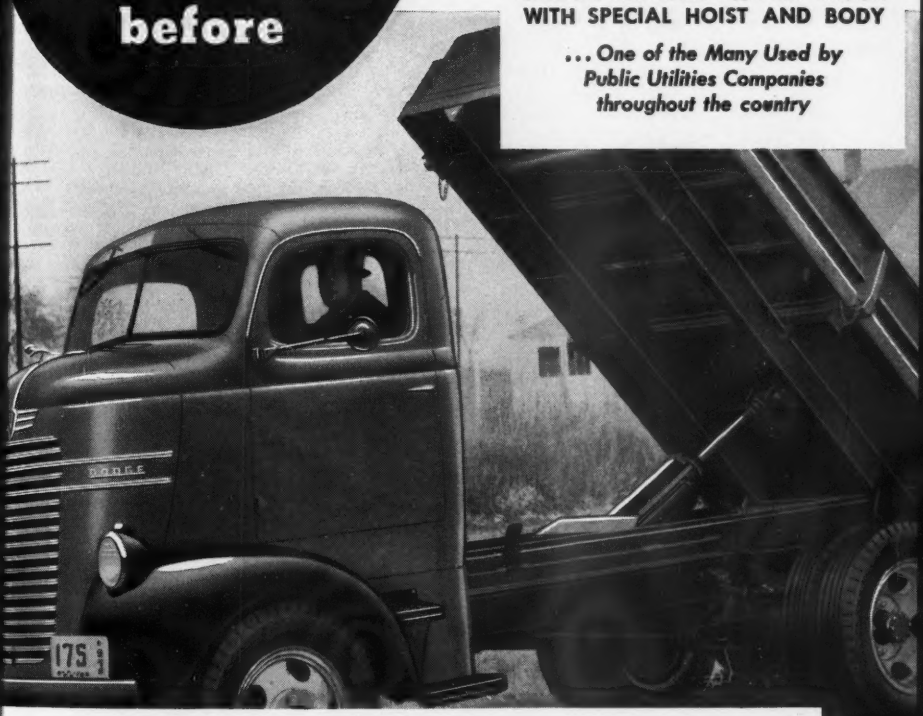
More Money-Saving Advantages than ever before

• When a Dodge owner says: "Best truck I ever owned," he means several things. He means—*satisfaction* with a truck that stays on the job—*satisfaction* with high gas mileage, low oil consumption—*satisfaction* with QUALITY that reduces maintenance. No wonder! There are a half-million man-hours of experienced truck engineering devoted each year to making *Job-Rated* trucks *better* trucks for you to own! They're *better* because of new *quality* in materials; new standards of precision manufacture. You'll know real satisfaction, and *real* truck economy when you buy Dodge *Job-Rated* trucks.

DODGE DIVISION, CHRYSLER CORP., DETROIT, MICH.

DODGE *Job-Rated* 1½-TON TRUCK WITH SPECIAL HOIST AND BODY

... One of the Many Used by Public Utilities Companies throughout the country



Look at These DODGE *Job-Rated* TRUCK FEATURES

- INCREASED HORSEPOWER and TORQUE—82.5 horsepower (½-Ton), 85 horsepower (1-Ton).
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- PRECISION-TYPE ENGINE BEARINGS—Steel backed, easily replaceable.
- EXHAUST VALVE SEAT INSERTS—Prolong valve life, save regrinding expense.
- BY-PASS THERMOSTAT—Speeds engine warm-up, saves gas and oil, improves cold weather performance.
- COMFORT DESIGN CABS—Sealed and insulated; wide, deep-cushioned seats; real driver comfort.

See Your Dodge Deale for

1. A "GOOD DEAL"
2. EASY BUDGET TERMS
3. RELIABLE USED TRUCKS, ALL MA

DEPEND ON DODGE *Job-Rated* TRUCKS

"*Job-Rated*" MEANS A TRUCK THAT FITS YOUR

Complete details on the M. S. A. Velocity Power Gauge Tester may be secured by writing to Mine Safety Appliances Co., Braddock, Thomas and Meade Sts., Pittsburgh, Pa.

Chicago Wheel & Mfg. Adds New Tool to "Handee" Line

THE Handee Artizan, a new reciprocating plunger type tool has just been added to the well-known Handee line by the Chicago Wheel & Mfg. Company, 1101 West Monroe Street, Chicago, Ill.

This new electric tool is capable of a variety of applications. The reciprocating plunger moves backward and foreward 800 times a minute with a stroke of 1¼" which can be varied down to ⅜". The unit is powered by a Delco built Universal type motor, entirely self-contained with a weight of 1½ pounds and shaped so that it can be guided by the operator easily over the work.



Hammering out artistic designs with the Handee Artizan.

A simple technique has been developed so that a person even without experience can turn out with the Handee Artizan highly decorative and valuable art metal pieces that compare favorably with the best results of skilled professionals, according to the manufacturer. A power accumulator built into the tool automatically governs the force of the stroke so that none of the blows are absorbed by the operator's hand or arm and markings on the metal are entirely uniform.

The tool will hammer, surface, shape, form, sink, file, engrave, chase, repousee and tool all types of soft metal and even tool and stamp leather. This is said to be the first portable power tool ever offered to the craftsmen in the art metalcraft or leather field. Two years of intensive development and research work on the part of the manufacturer were required before the Artizan was added to the Handee line.

From an industrial standpoint the unit is suitable for use as a portable filer reaching hard to get at places and points the way to definite time and money savings in eliminating tedious hand work in filing tools, dies, jigs and fixtures and irregular shaped castings.

Full particulars can be obtained from the manufacturer.

MARTENS & STORMOEN
successors to
THONER & MARTENS
Disconnecting and Heavy Duty Switches
15 Hathaway St., Boston, Mass.

R-R Sales Conference Devoted To Public Utility Problems

FOLLOWING laboratory fire tests of Safe-Cabinets recently held at its Marietta, Ohio, plant, the Remington Rand Company held a public utility sales conference devoted entirely to a study of public utility problems.

At the conference, which was attended by a large number of representatives of the company's public utility division, papers were presented dealing with records in actual use in utility companies and the accomplishments that have been secured from their installations. Property records, customer service and meter records systems, customer history records, unit bookkeeping for large utilities, stores control system, commission requirements relative to retention and preservation of records, merchandise time-payment records and various other accounting records and systems were among the subjects discussed at the meeting.

AGAEM to Hold Annual Convention in Los Angeles

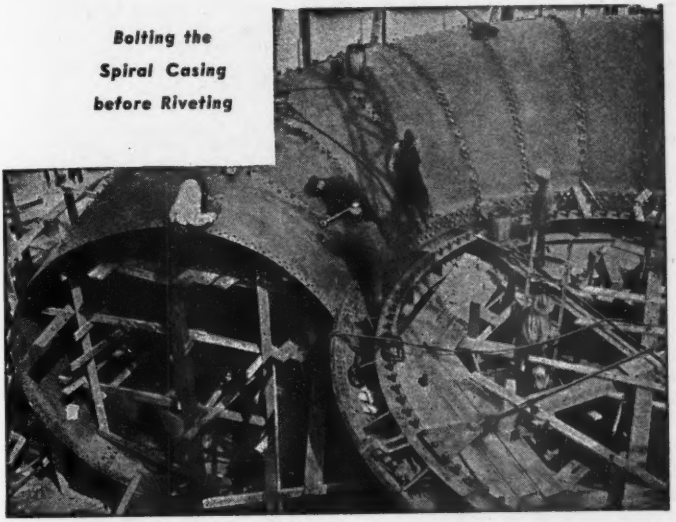
THE annual convention of the Association of Gas Appliance and Equipment Manufacturers will be held at the Ambassador Hotel, Los Angeles, Calif., June 3-5, 1941, according to an announcement by W. E. Derwent, president of the Association.

The Association is comprised of over 300 manufacturers of gas appliances, accessories and equipment from all parts of the country.

Each of the Association's product divisions will meet during the convention under their respective chairman. At these divisional meetings plans for sales promotion activities in behalf of major gas appliances will be discussed as well as the general business conditions of each group.

This will be the first time that the Association has held their convention on the Pacific Coast and a record attendance is expected. The manufacturers and gas utilities have done an excellent job of sales promotion on the Coast during the past few years in behalf of

Bolting the Spiral Casing before Riveting



HYDRAULIC TURBINES

PENSTOCKS

GATES—HOISTS

BUTTERFLY VALVES

MECHANICAL RACK RAKES

NEWPORT NEWS SHIPBUILDING AND DRY DOCK COMPANY

Hydraulic Turbine Division

NEWPORT NEWS, VA.

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gas and gas appliances and it was at the invitation of the utilities and manufacturers that the Association's Time and Place Committee finally decided to hold the convention in Los Angeles.

Plans for the convention including speakers, general program, etc., will be announced at a later date.

Equipment Literature

Fluorescent Lighting

THE Edwin F. Guth Co., 2615 Washington St., St. Louis, Mo., has issued a catalog which is full of helpful technical data and



interesting suggestions for lighting problems. The new catalog covers a most complete line of fluorescent fixtures with patented Alzak reflectors. This catalog should be an important addition to product reference files as well as of considerable aid to everyone considering the installation of fluorescent lighting.

Two outstanding models described in the catalog are the new "Light-O-Day" Troffers with Light-O-Day Baffles for recessed lighting and the versatile "Twin-100" Flu-O-Flectors for the new five-foot 100W fluorescent lamp.

Copies of the catalog may be secured from The Guth Company.

Dodge Job-Rated Trucks

Full information on 1941 Dodge Job-Rated trucks, the most complete line Dodge has ever produced, is contained in a 44-page, four-color catalog just issued.

Representative models of the entire line, from half-ton commercial units to heavy-duty gas and Diesel powered freighters, are attractively illustrated in full color. Included, in addition to conventional models, are urban panel delivery, 1½ and 2-ton cab-over-engine units. Pictured and described also are the four clutches, three transmissions, eight rear axles, 23 frames, 10 spring combinations and six brake combinations used in the wide range of 112 standard chassis and body models.

Special sections are devoted to the comfort and durability of safety-steel cabs; also to dual purpose trucks and the two-tone color combinations available this year for the first time as standard on one-half, three-quarter and one-ton models. Special bodies, extra equipment, and deluxe cabs are also shown and described. Several pages are devoted to specifications and owners' experiences. Truck operators may obtain a copy by writing to the Dodge Truck Advertising Department, Detroit, Michigan.

Motors

Allis-Chalmers Mfg. Company, Milwaukee, Wisconsin, has issued a special 28-page Bulletin B-6107 on "Motors for Driving Power House Auxiliaries." The booklet covers all types of motors suitable for power plant applications of one horsepower and larger—illustrating and briefly describing the more important ones.

Indoor Bus Supports

Delta-Star Electric Company, Chicago, Ill., have recently published Bulletin 31-C covering their complete line of Unit Type Indoor Bus Supports. Illustrations are in color and dimensional data is included.

With the fittings listed in this bulletin, 50,000 bus support combinations can be assembled.

There are tables giving ampere capacities of standard bus shapes such as round and square copper tubing, copper and aluminum bars, and channels and angles—also physical data for strength calculations.

Copies of this bulletin may be secured free on request to the manufacturer.

New Appointments

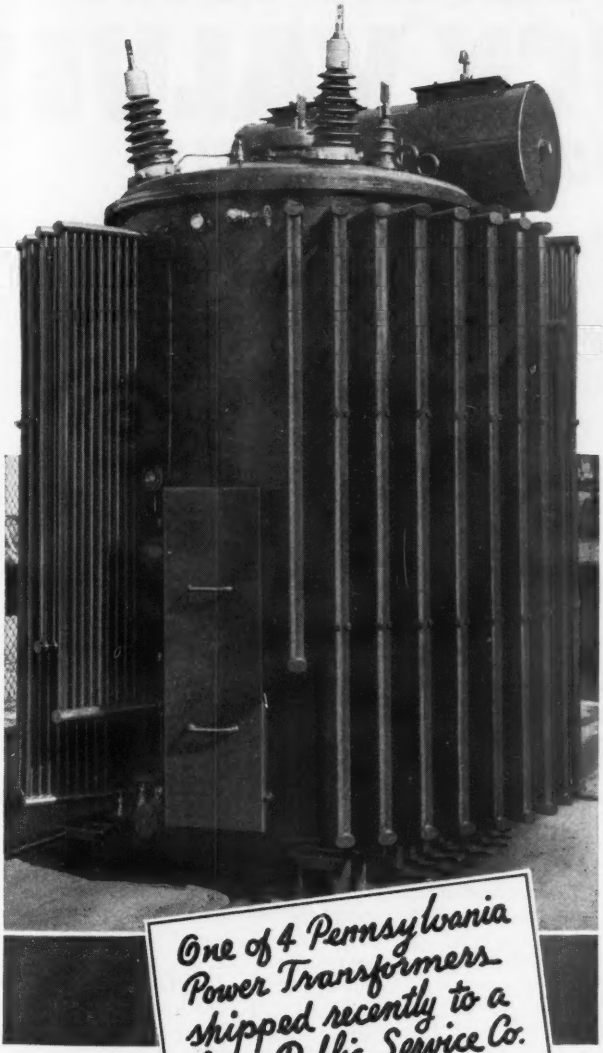
G-E Air Conditioning

Stuart M. Crocker has relinquished his responsibilities as manager of the air conditioning and commercial refrigeration department of General Electric Co. upon being elected a vice president, and will henceforth be concerned with customer relations. H. L. Andrews, vice president, assumes direction of air conditioning and commercial refrigeration in addition to carrying on as head of General Electric's appliance and merchandise department.

Hancock Valve Division

Manning, Maxwell & Moore, Inc., Bridgeport, Connecticut, makers of pressure gauges, safety valves, thermometers, and globe valves, has announced the appointment of Clinton D. St. Clair as works manager of their Hancock Valve Division Plant in Boston.

Mr. St. Clair has had 22 years of manufacturing experience with such prominent industrial organizations as B. F. Goodrich, Ohio Match Company, Erie City Iron Works, and American Machine & Metals, Inc. His duties for the past 15 years have been similar to those of his present capacity, and especially fit him for his new work.



8333 kva
36 kv
Single-phase

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Equipped with standard Pennsylvania Uni-Row Radiators and Straight-Line Tap Changers. Subjected to impulse, temperature run and other A.I.E.E. tests.

•

One of 4 Pennsylvania Power Transformers shipped recently to a large Public Service Co.

11

TOMORROW'S TREND TODAY IN TRANSFORMERS

Pennsylvania TRANSFORMER COMPANY

1701 ISLAND AVENUE, N. S., PITTSBURGH, PA.

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This is the powerful International Heavy-Duty D-500 Cab-Over-Engine Truck, 18,800 lbs. gross weight rating, used at Gibson, Ind., by the Indiana Harbor Belt Railroad.

Join the big family of International owners next time you buy trucks—and enjoy the *performance* and *economy* these units will give you over *a long period of years.*

There's real satisfaction when Internationals are on the job. That's because this organization *knows how* to build trucks for tough work. These trucks are *all-truck* all the way through, readily adapted to all types of loads and conditions.

Depend on Internationals for outstanding service at lowest possible cost. Find out all about the types and sizes best suited for your work. The nearby International Dealer or Company Branch will give you complete information. Sizes from Half-Ton units to powerful Six-Wheelers.

INTERNATIONAL HARVESTER COMPANY
180 North Michigan Avenue, Chicago, Illinois

INTERNATIONAL TRUCKS

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Utilities' Preference In An Automobile Searchlight

*Charley—with us 20 years—is an artist in metal. Those strong, knowing fingers can perform near miracles with tools! Consummate craftsmen like Charley are major factors behind MASTER-LIGHTS' high quality.

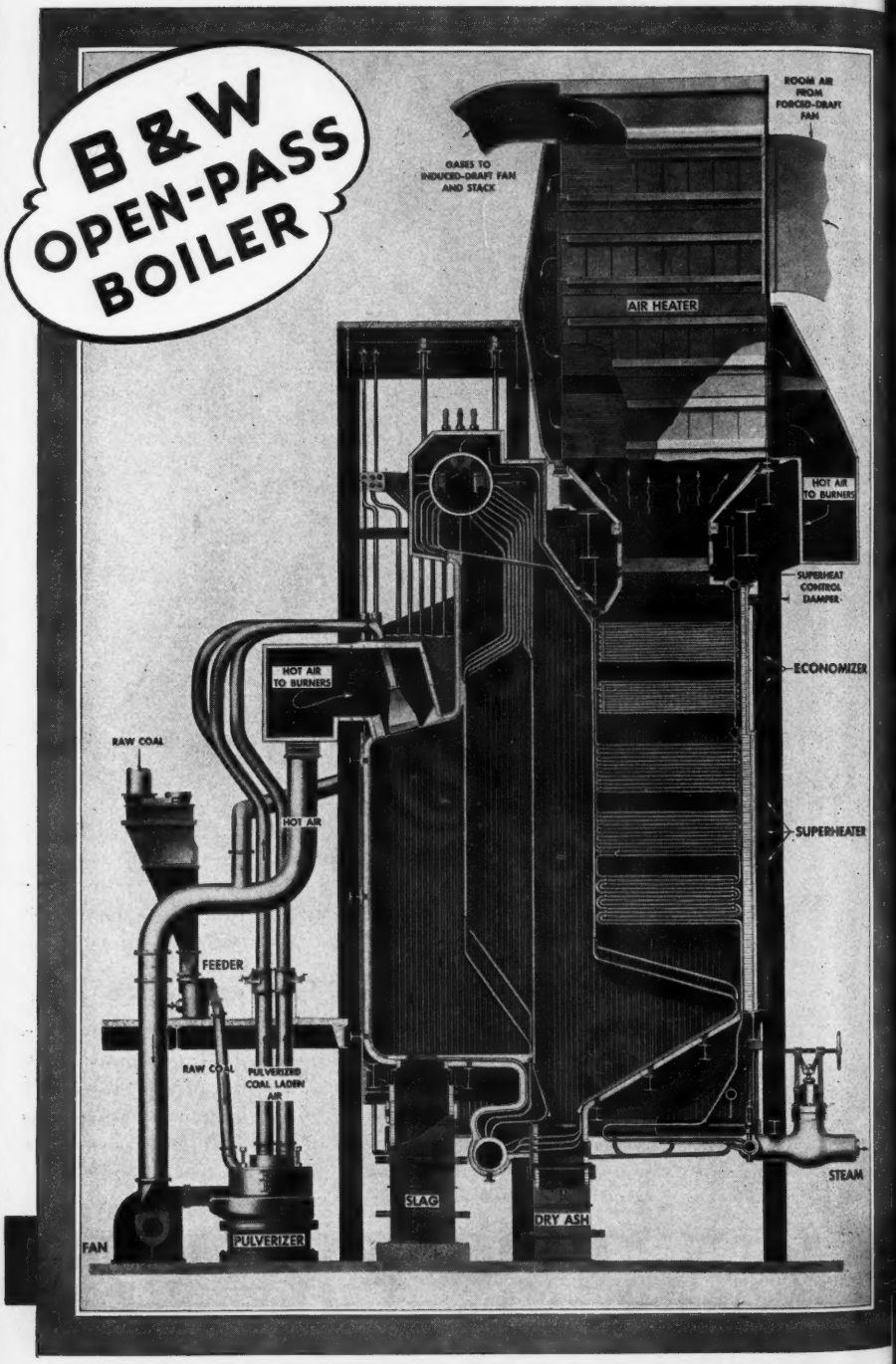
There's a reason why over 500 U. S. Public Utilities choose MASTER-LIGHTS for their repair crews . . . Craftsmen create them. Each MASTER-LIGHT meets a HIGHER standard of performance than does *any* comparable competitive light . . . "*Quality-Built*" sums it up.

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Many satisfied utility customers have led us to specialize in manufacturing lights utilities need—both hand lights and automobile spotlights. Read the new MASTER-LIGHT catalog. In it, you'll find *high-powered, convenient* MASTER-LIGHTS that will help YOUR repair crews make better, faster night repairs. MASTER-LIGHTS are sent on approval. Write for free catalog now.

CARPENTER MANUFACTURING CO.
Manufacturers of **MASTER-LIGHTS**
179 Sidney Street, Cambridge, Mass.

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Attacks the Slag Problem at its roots

e B&W Open-Pass Boiler, the prob- of realizing trouble-free super- ter performance is attacked by a hod that goes far beyond such ex- dients as tube-spacing and slag-re- val apparatus employed in the past. rikes at the cause of slag-fouling of erheater tubes in high-pressure, high- perature units. It does not merely empt to relieve a condition that at time appeared to be incurable be- se of the fixed fusing-temperature any given coal ash and the necessity delivering gases of high temperature the superheater.

he Open-Pass Boiler, this problem is acked directly at its roots. There is re complete elimination of the ash, to better methods of decreasing the antity of ash carried to the super- heater. Furthermore, this ash is all dry and granular, instead of sticky in lanes when it reaches the superheater, be- cause there are no lanes of higher-than- average temperature gases.

And, these desirable results are ob- tained in a unit having features of inherent economy, without sacrificing other desirable operating characteris- tics such as stability of flame and ease of slag tapping over a wide range of loads.

All these form sufficient reason why the boiler should depart radically from tra- ditional designs. Its adoption for 10 stations, with units having a combined capacity of over 9,500,000 pounds of steam per hour, is evidence of the soundness of the principles on which the design of the boiler is based.

88-T

THE BABCOCK & WILCOX COMPANY
85 LIBERTY STREET . . . . . NEW YORK, N. Y.

BABCOCK & WILCOX

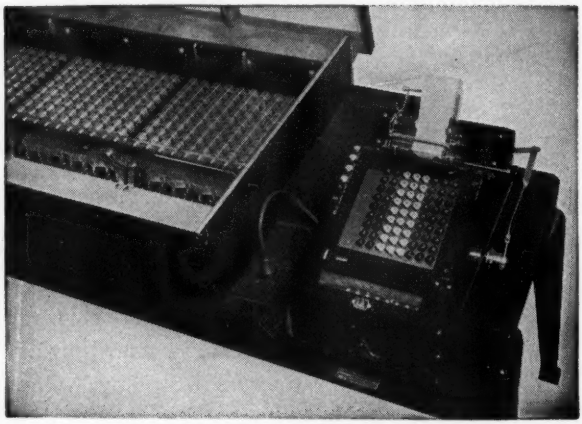
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Customer Usage Data

• At Lower Cost • In Less Time

• With Greater Accuracy

THE ONE-STEP METHOD



OF BILL ANALYSIS

R & S Bill Frequency Analyzer: developed for our Utility Rate Service. The kw.-hrs. billed are entered on the adding machine keyboard. A tape is prepared of all items and a consumption total accumulated which serves as a control. At the same time—through this *single* operation—the bill count for each kw.-hr. step is made by the electrically controlled accumulating registers.

• A continuance of frequent rate changes—the necessity of checking load-building activities—the pressing need for current data on customer usage—are but a few of the reasons many Companies are using R & S ONE-STEP METHOD to analyze and compile information required for scientific rate making. They have not only reduced the costs on this work to a fraction of a cent per item, but have obtained monthly or annual bill-frequency tables in a few days instead of weeks and months.

• Write for your copy of "The One-Step Method of Bill Analysis," an interesting booklet which describes briefly how these savings are accomplished.

Recording & Statistical Corporation

Utilities Division

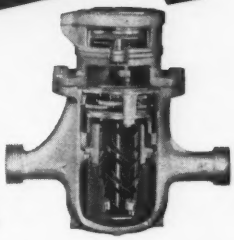
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Stop nerve racking meter noise forever!.. **INSTALL**



PITTSBURGH IMO WATER METERS

LITTLE annoyances often become major nuisances. In the category of nuisances is the persistent clicking sound so frequently resulting from the operation of conventional meters. Do you make your consumers tolerate such nerve racking disturbances?

Meter noise varies in intensity with the length of service. A worn meter, especially one installed in certain types of frame dwellings, can produce sounds which will be telegraphed and amplified throughout the entire structure. These sounds are particularly annoying at night to those who have retired. The use of flexible copper tubing also tends to accentuate the transmission of meter noise.

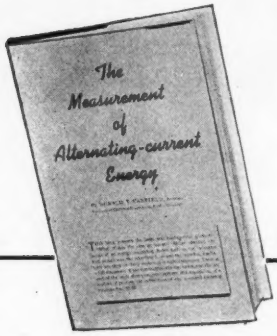
The IMO meter runs "as quiet as a mouse." Due to its basic construction, it will never become noisy. The IMO operates silently, both when new and after millions of gallons have been measured. The use of *revolving parts*, rather than nutating or oscillating parts, results in a smoothness and quietness of operation that sets a new standard for domestic meter performance.

You are invited to test the IMO meter on your own lines. Ask for demonstration or write for a copy of Bulletin W-529.

PITTSBURGH EQUITABLE METER COMPANY
MERCO NORDSTROM VALVE CO.
NEW YORK · BUFFALO · PHILADELPHIA · KANSAS CITY · TULSA · LOS ANGELES
Main Offices · PITTSBURGH, PA.
DES MOINES · CHICAGO · COLUMBIA · MEMPHIS · OAKLAND · HOUSTON

Remember—PITTSBURGH IMO METERS WEAR IN WHERE OTHERS WEAR OUT

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A new book for metermen

TELLING HOW TO measure alternating-current energy with the induction watt-hour meter

Make the information on metering in this practical new book bring you real profit . . .

You know your job. But the more you know about it, the more you know about the tools you work with, the more you know about attacking and solving properly special problems in your line—the more valuable you are as a man and as an employee.

THESE TEN PRACTICAL CHAPTERS WILL HELP YOU

- **Early History of the Watt-hour Meter Art.**
- **Elemental Theory of Torque Production.**
- **Essential Elements of the Watt-hour Meter.**
- **Application of the Essential Elements in Modern Meters.**
- **Watt-hour Constants; Gear and Register Ratios.**
- **Vector Analysis of the Induction Watt-hour Meter.**
- **Compensation of Errors.**
- **Polyphase Metering.**
- **Analytical Checking of Metering Schemes.**
- **Metering Special Circuits.**

This informative book answers for metermen the following questions:

1. **What makes the disk in a meter go around?**
2. **How can this revolving disk be made to measure energy?**
3. **What metering scheme should one use to measure the energy in a particular circuit?**
4. **How may one be sure that all the energy in such a circuit is metered by the particular scheme chosen?**

The presentation is based throughout on the author's long experience in teaching metering principles to groups and special classes of metermen.

THE MEASUREMENT OF ALTERNATING-CURRENT ENERGY

BY DONALD T. CANFIELD

Associate Professor of Electrical Engineering, Purdue University

210 pages 5½ x 8, 74 illustrations $2.00

THE book begins with an outline of the development of the principles of metering. It then provides an answer to the question: What are the ways and means, together with their modifications, of producing a torque on a rotatable member by electromagnetic means?

After showing the possibilities of producing rotation in a disk by electromagnetic means, it explains why such motion must have a purpose. Then follows a discussion of the remaining essentials of an energy meter and the application of these essentials in modern meters.

Meter constants and methods of compensation are covered in considerable detail. Also a method is developed and applied for checking the correctness of a proposed metering scheme to ascertain whether or not the proposed meter will or will not record all the energy passing through the metering point.

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You save money on "Clevelands" speed and ability to "cut the buck" on tough jobs.

HE CLEVELAND TRENCHER COMPANY

"Pioneer of the Small Trencher"

00 St. Clair Ave. Cleveland, Ohio

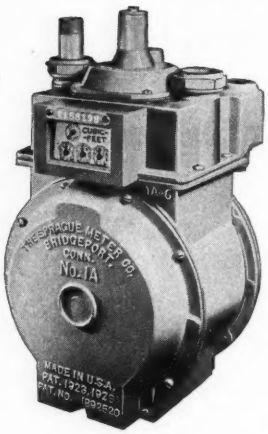


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CLEVELANDS

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GAS MEASUREMENT AND
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Natural and Butane Service

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THE SPRAGUE METER CO.
Bridgeport, Conn.

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PUBLIC UTILITY REGULATION

571 pages, $4.00

AN analysis of the nature, extent, and problems of public utility regulation in the United States, with emphasis upon the expanding role of the Federal Government in the regulation of public utilities, its activities in undertaking power projects and promoting rural electrification, and the issues involved in governmental ownerships. The well-rounded treatment and critical viewpoint will be of aid to all who are interested in evaluating the present status of public utility regulation, its strengths, weaknesses, and significance for privately-owned industry.

Order from

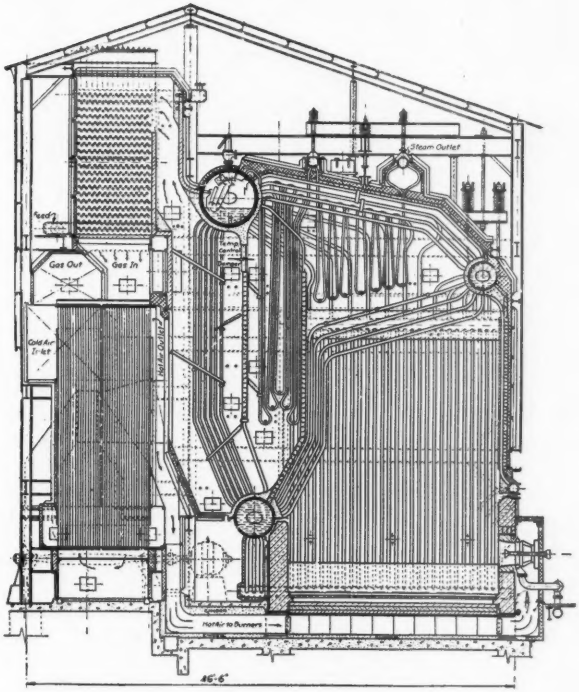
Public Utilities Reports, Inc.
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A Large Texas Utility



250,000 Pounds of Steam per hour. 975 lbs. Steam Pressure. 910° F. Steam Temperature.

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THE eye-appeal makes a buy appeal in Niagara Winter Air Conditioning and gravity units. Modern casing design . . . concealed controls . . . copper chrome cast iron: or . . . Toncan iron heat exchangers . . . the choice of belt or direct drive blowers with two-speed control . . . the exclusive Niagara summer-winter switch . . . combine with high efficiency and low prices to give you a furnace appreciated by home owners and builders alike.

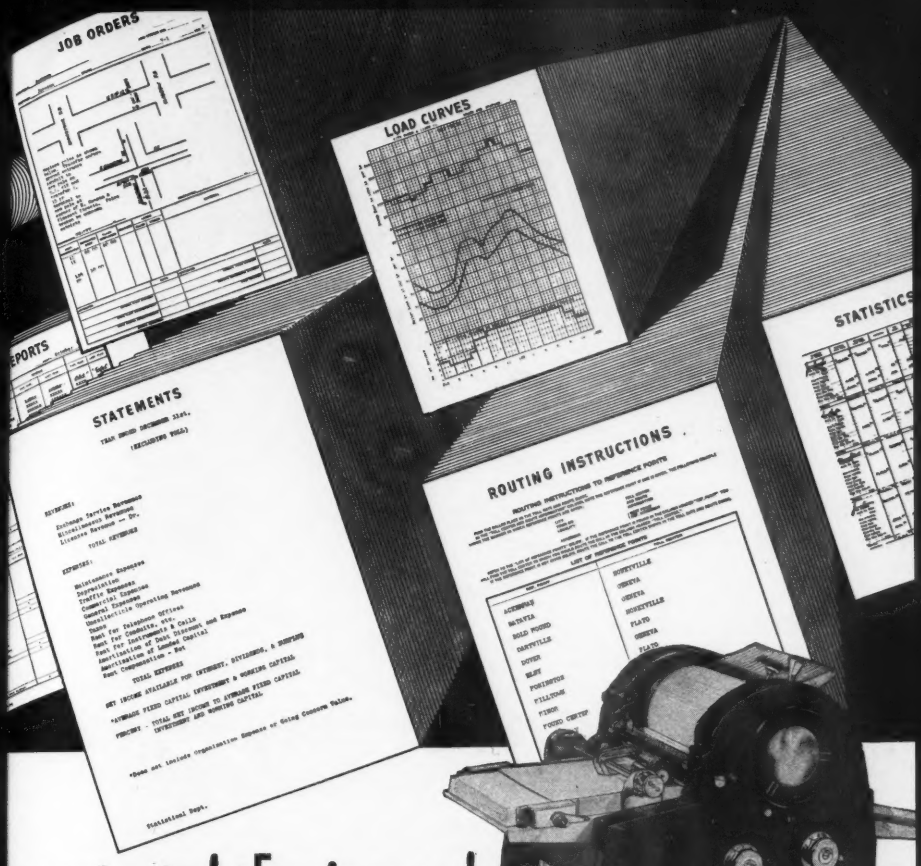
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2500 West 27th Street **Cleveland, Ohio**

Established in 1890

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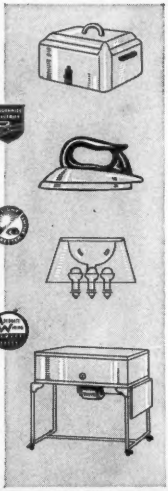
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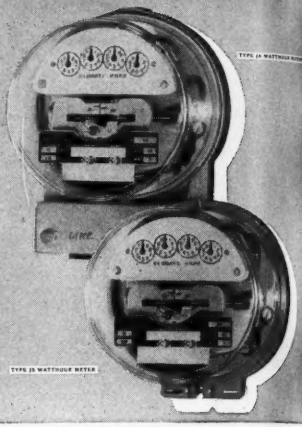
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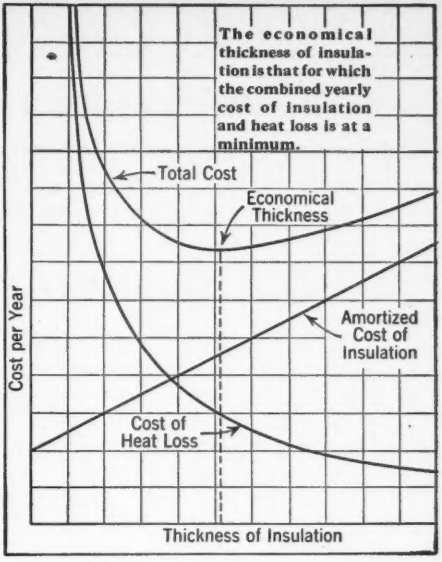
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